



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

1032/H

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ICTR-99-50-A
18th June 2012

{1032/H - 1029/H}

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Pre-Appeal Judge
Registrar: Mr. Adama Dieng
Decision of: 18 June 2012

JUSTIN MUGENZI
PROSPER MUGIRANEZA

v.

THE PROSECUTOR

Case No. ICTR-99-50-A

DECISION ON PROSECUTOR'S MOTION TO EXPUNGE FROM THE RECORD
ANNEXES D AND E TO MUGIRANEZA'S REPLY BRIEF

Defence Counsel:

Kate Gibson and Christopher Gosnell for Justin Mugenzi
Tom Moran and Cynthia J. Cline for Prosper Mugiraneza

The Office of the Prosecutor:

Hassan Bubacar Jallow
James J. Arguin
George William Mugwanya
Evelyn Kamau

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| ICTR Appeals Chamber |
| Date: 18 th June 2012 |
| Action: R. Juma |
| Copied To: All concerned |

CF

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| International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda |
| CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS |
| NAME / NOM: <i>CONSTANT K. HOMETOWN</i> |
| SIGNATURE: <i>[Signature]</i> DATE: <i>18-06-2012</i> |

I, **THEODOR MERON**, Presiding 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 (“Appeals Chamber” and “Tribunal”, respectively) and Pre-Appeal Judge in this case,¹

RECALLING that Trial Chamber II of the Tribunal entered convictions against Mr. Justin Mugenzi and Mr. Prosper Mugiraneza in the case of *The Prosecutor v. Casimir Bizimungu et al.* on 30 September 2011, and that the written Trial Judgement was filed in English on 19 October 2011;²

NOTING that Mr. Mugenzi and Mr. Mugiraneza filed their notices of appeal and their Appellant’s briefs on 21 November 2011 and 20 February 2012, respectively;³ that the Prosecution filed its consolidated Respondent’s brief on 30 April 2012;⁴ and that Mr. Mugenzi and Mr. Mugiraneza filed their briefs in reply on 15 May 2012;⁵

BEING SEISED of a motion filed by the Prosecution on 16 May 2012, in which the Prosecution requests the Appeals Chamber to expunge Annexes D and E to the Mugiraneza Reply Brief from the record;⁶

NOTING that the Prosecution argues that these annexes contain arguments and thus violate the Practice Direction on the Length of Briefs and Motions on Appeal dated 8 December 2006 (“Practice Direction”);⁷

NOTING that Mr. Mugiraneza responded to the Motion on 22 May 2012, arguing that Annexes D and E to the Mugiraneza Reply Brief comply with the Practice Direction;⁸

NOTING that, in an attachment to the Response, Mr. Mugiraneza submitted amended versions of Annexes D and E (“Amended Annexes D and E”), and that he argues, in the alternative, that the

¹ Order Assigning a Pre-Appeal Judge, 30 November 2011.

² *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Judgement and Sentence, dated 30 September 2011 and filed on 19 October 2011 (“Trial Judgement”), paras. 1222-1250, 1322-1383, 1959-1962, 1976-1988.

³ Justin Mugenzi’s Notice of Appeal, 21 November 2011; Prosper Mugiraneza’s Notice of Appeal, 21 November 2011; Justin Mugenzi’s Appeal Brief, 20 February 2012; Prosper Mugiraneza’s Appellate Brief, 20 February 2012 (“Mugiraneza Appeal Brief”). On 22 November 2011, Mr. Mugiraneza filed a corrected version of his notice of appeal.

⁴ Prosecutor’s Brief in Response to Justin Mugenzi and Prosper Mugiraneza’s Appeals, 30 April 2012.

⁵ Justin Mugenzi’s Reply Brief, 15 May 2012; Prosper Mugiraneza’s Reply to the Prosecutor’s Appellate Brief, 15 May 2012 (“Mugiraneza Reply Brief”).

⁶ Prosecutor’s Motion Requesting Expunging from the Record of Annexures to Mugiraneza’s Reply Brief, 16 May 2012 (“Motion”), paras. 2, 7.

⁷ Motion, paras. 2-6.

Amended Annexes D and E could be substituted for the original Annexes D and E in the event that the original versions are deemed to violate the Practice Direction;⁹

CONSIDERING that, pursuant to paragraph (C)4 of the Practice Direction, annexes do not count towards the word limits set forth in the Practice Direction, provided that these annexes do not contain “legal or factual arguments, but rather references, source materials, items from the record, exhibits, and other relevant, non-argumentative material”;

CONSIDERING that “an annex that provides description for some of the references cited does not necessarily lead to the conclusion that the annex has argumentative content”;¹⁰

CONSIDERING that the determination of whether an annex is inappropriately argumentative has to be made on a case-by-case basis;¹¹

NOTING that Annexes D and E to the Mugiraneza Reply Brief include a column entitled “Deficiencies in the Trial Chamber’s reasoning and analysis” and that this column contains legal or factual arguments;

FINDING that Annexes D and E are therefore inconsistent with the criteria set forth in paragraph (C)4 of the Practice Direction;

CONSIDERING that the Amended Annexes D and E simply reiterate arguments raised in Mr. Mugiraneza’s appeals submissions with references to evidence adduced at trial;¹²

FINDING that the Amended Annexes D and E are therefore not inconsistent with the criteria set forth in paragraph (C)4 of the Practice Direction;

FOR THE FOREGOING REASONS,

GRANT the Prosecution’s Motion; and

⁸ Prosper Mugiraneza’s Response to Prosecutor’s Motion Requesting Expunging from the Record of Annexures to Mugiraneza’s Reply Brief, filed without signature on 22 May 2012 and filed with signature on 13 June 2012 (“Response”), para. 1. The Prosecution did not file a reply to the Response.

⁹ Response, paras. 2, 3. See also Response, Annexes D and E.

¹⁰ Decision on Motions for an Order Requiring the Prosecution to Re-File its Response Briefs, 16 April 2012 (“Decision of 16 April 2012”), p. 2, quoting *Prosecutor v. Ante Gotovina and Mladen Markač*, Case No. IT-06-90-A, Decision on Prosecution’s Motion to Strike Ante Gotovina’s Reply Brief, 18 October 2011 (“*Gotovina and Markač* Decision”), p. 2 (internal quotation marks omitted).

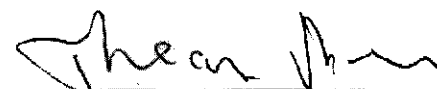
¹¹ Decision of 16 April 2012, p. 2, quoting *Gotovina and Markač* Decision, p. 2.

¹² See Response, Annexes D and E. See also Mugiraneza Appeal Brief, paras. 192-196, 200, 211, 228, 252, 258, 260, 263; Mugiraneza Reply Brief, paras. 79, 82, 83.

DIRECT the Registry to expunge Annexes D and E to the Mugiraneza Reply Brief from the record and to replace them with the Amended Annexes D and E.

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

Done this 18th day of June 2012,
At The Hague,
The Netherlands.



Judge Theodor Meron
Pre-Appeal Judge

[Seal of the Tribunal]

