



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

1398/H

ICTR-99-50-A
15th January 2013
{1398/H – 1395/H}

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Patrick Robinson
Judge Liu Daqun
Judge Andrézia Vaz
Judge Bakhtiyar Tuzmukhamedov

Registrar: Mr. Bongani Majola

Decision of: 15 January 2013

ICTR Appeals Chamber

Date: 15 JAN 2013

Action:

Copied To: Judges,

Parties, JPU, WOs,
WSS

JUSTIN MUGENZI
PROSPER MUGIRANEZA

v.

THE PROSECUTOR

Case No. ICTR-99-50-A

**DECISION ON PROSPER MUGIRANEZA'S MOTION FOR LEAVE TO FILE POST-
HEARING SUBMISSIONS**

Defence Counsel:

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

The Office of the Prosecutor:

Mr. Hassan B. Jallow
Mr. James J. Arguin
Mr. George W. Mugwanya
Mr. William M. Mubiru
Mr. Mihary Andrianaivo
Mr. Lansana Dumbuya

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);

RECALLING that Trial Chamber II of the Tribunal (“Trial Chamber”) 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;¹

RECALLING that Mr. Mugenzi and Mr. Mugiraneza appealed against the Trial Judgement,² that the filing of the briefs in this case is complete,³ and that the parties presented their oral arguments at a hearing held in Arusha, Tanzania, on 8 October 2012 (“Appeal Hearing”);⁴

FURTHER RECALLING that the Appeals Chamber rendered a judgement in the case of *Jean-Baptiste Gatete v. The Prosecutor* on 9 October 2012⁵ and that the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) rendered a judgement in the case of *Prosecutor v. Ante Gotovina and Mladen Markač* on 16 November 2012;⁶

BEING SEISED OF a motion filed by Mr. Mugiraneza on 27 November 2012, in which he seeks authorization to file a post-submission brief to address: (i) the *Gotovina and Markač* Appeal Judgement, as he considers the ICTY Appeals Chamber’s findings therein to be relevant to, *inter alia*, his submissions with regard to the Trial Chamber’s consideration of the circumstantial evidence supporting his convictions; and (ii) the *Gatete* Appeal Judgement, as he considers that the Appeals Chamber’s findings therein are relevant to his submissions relating to the right to a trial without undue delay;⁷

¹ *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”), para. 1988. *See also* Trial Judgement, paras. 1222-1250, 1322-1383, 1959-1962, 1976-1987.

² Justin Mugenzi’s Notice of Appeal, 21 November 2011; Prosper Mugiraneza’s Notice of Appeal, 21 November 2011. *See also* Prosper Mugiraneza’s Corrected Notice of Appeal, 22 November 2011.

³ Justin Mugenzi’s Appeal Brief, 20 February 2012; Prosper Mugiraneza’s Appellate Brief, 20 February 2012; Prosecutor’s Brief in Response to Justin Mugenzi and Prosper Mugiraneza’s Appeals, 30 April 2012; Justin Mugenzi’s Reply Brief, 15 May 2012; Prosper Mugiraneza’s Reply to the Prosecutor’s Appellate Brief, 15 May 2012.

⁴ *See generally* AT. 8 October 2012.

⁵ *Jean-Baptiste Gatete v. The Prosecutor*, Case No. ICTR-00-61-A, Judgement, 9 October 2012 (“*Gatete* Appeal Judgement”).

⁶ *Prosecutor v. Ante Gotovina and Mladen Markač*, Case No. IT-06-90-A, Judgement, 16 November 2012 (“*Gotovina and Markač* Appeal Judgement”).

⁷ Prosper Mugiraneza’s Motion for Leave to File Post-Submission Brief Limited to the Effects of the Appeals Chamber’s Decisions in *Gotovina* and *Gatete* and Proposed Post-Submission Brief, 27 November 2012 (“Motion”), paras. 2, 3.

NOTING that Mr. Mugiraneza submits that it is in the interests of justice to authorize^{1396/H} post-submission briefing, as both the *Gotovina and Markač* Appeal Judgement and the *Gatete* Appeal Judgement were issued after the Appeal Hearing;⁸

NOTING that, in an attachment to the Motion, Mr. Mugiraneza has submitted a proposed post-submission brief;⁹

NOTING that the Prosecution responded on 4 December 2012, arguing that the Motion: (i) does not fall within the ambit of post-appeal hearing submissions which may be exceptionally considered by the Appeals Chamber; (ii) is unfounded; and (iii) should be dismissed and expunged from the record;¹⁰

NOTING that Mr. Mugiraneza did not reply;

RECALLING that the Appeals Chamber may consider post-hearing submissions if they relate to a variation of the grounds of appeal¹¹ or if it has made a specific request to the parties for further information;¹²

RECALLING FURTHER that, in preparing a judgement, the Appeals Chamber considers all relevant jurisprudence, including decisions issued after the hearing of an appeal;¹³

CONSIDERING that the Motion does not relate to a variation of Mr. Mugiraneza's grounds of appeal, and that the Appeals Chamber has not directed the parties to make additional submissions;

FINDING that the Motion does not demonstrate the need for consideration of post-hearing submissions;

NOTING that the Prosecution argues that the Motion constitutes an abuse of process and of the resources of the Tribunal and that, therefore, the Appeals Chamber should deny any fees associated with its filing;¹⁴

⁸ Motion, para. 3.

⁹ Motion, Annex A ("Proposed Post-Submission Brief").

¹⁰ Prosecution's Response to: "Prosper Mugiraneza's Motion for Leave to File Post-Submission Brief Limited to the Effects of the Appeal [sic] Chamber Decisions in *Gotovina and Gatete* and Proposed Post-Submission Brief", 4 December 2012 ("Response"), paras. 3-17. .

¹¹ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-A, Decision on Muvunyi's Request for Consideration of Post-Hearing Submissions, 18 June 2008 ("*Muvunyi* Decision of 18 June 2008"), para. 6. *See, e.g., The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-A, Decision on the Prosecutor's Motion to Expunge a Submission from the Record, 25 April 2008 ("*Muvunyi* Decision of 25 April 2008"), paras. 6, 7. *See also* Rule 108 of the Rules.

¹² *See Muvunyi* Decision of 18 June 2008, para. 6; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Decision on Defence Filings Subsequent to the Close of the Appeal Hearing, 5 May 2000, p. 3; *Muvunyi* Decision of 25 April 2008, para. 5.

¹³ *See Muvunyi* Decision of 18 June 2008, para. 6.

CONSIDERING that, in accordance with Rule 73(F) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), the Appeals Chamber may impose sanctions against Counsel if Counsel brings a motion that, in the opinion of the Chamber, is frivolous or is an abuse of process, and that such sanctions may include non-payment, in whole or in part, of fees associated with the motion and/or costs thereof;¹⁵

FINDING that, while the Motion fails to demonstrate that the filing of the Proposed Post-Submission Brief should be authorized, it does not amount to professional negligence such as to warrant sanctions under Rule 73(F) of the Rules;

FINDING FURTHER that the Prosecution has not demonstrated any basis to expunge the Motion from the record;

FOR THE FOREGOING REASONS,

DENIES the Motion.

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

Done this 15th January 2013,
At The Hague,
The Netherlands.


Judge Theodor Meron
Presiding

[Seal of the Tribunal]

¹⁴ Response, paras. 3, 17.

¹⁵ See, e.g., *Tharcisse Renzaho v. The Prosecutor*, Case No. ICTR-97-31-A, Decision on Tharcisse Renzaho’s Motions for Admission of Additional Evidence and Investigation on Appeal, 27 September 2010, para. 40.