

MICT-12-25-R14.1

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UNITED
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Mechanism for International Criminal Tribunals

Case No: MICT-12-25-R14.1

Date: 14 August 2015

Original: English

THE TRIAL CHAMBER

Before: Judge Vagn Joensen, Presiding
Judge William Hussein Sekule
Judge Florence Rita Arrey

Registrar: Mr. John Hocking

PROSECUTOR

v.

JEAN UWINKINDI

Public

**MOTION TO STRIKE UWINKINDI'S
SUPPLEMENTAL BRIEF**

Office of the Prosecutor:
Hassan Bubacar Jallow
James J. Arguin
François Nsanzuwera

Counsel for Jean Uwinkindi:
Gashabana Gatera

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Mechanism for International Criminal Tribunals**

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A handwritten signature in black ink, appearing to read 'McCall Carter', written over a white background within a black rectangular box.

1. The Trial Chamber should strike the Supplemental Brief in support of Uwinkindi's revocation request¹ (Supplemental Brief) because Uwinkindi has, in filing it, violated the Pre-Trial Judge's orders on authorized filings, on word limits, and on filing deadlines. Those orders were issued to ensure an orderly, efficient, and fair procedure for the litigation of the revocation request; their violation disrupts the conduct of the proceedings and impacts their fairness.

2. Under the Pre-Trial Judge's Scheduling Order² and the 22 July 2015 Decision,³ Uwinkindi had 44 days⁴ to file a brief of 9,000 words⁵, and the prosecution and the Republic of Rwanda had 30 days to file responses with the same 9,000-word limit.⁶ Uwinkindi then was to file a Reply of 3,000 words within 10 days.⁷ The Pre-Trial Judge's 11 August 2015 Order for Expedited Responses and Reply,⁸ which directed the prosecution and the Republic of Rwanda to respond to Uwinkindi's request for suspension of the Rwandan High Court proceedings by 21 August 2015, allowed Uwinkindi to reply to the prosecution's and the Republic of Rwanda's responses; it did not authorize Uwinkindi to file a supplemental brief.

3. By filing an unauthorized Supplemental Brief, Uwinkindi seeks to circumvent and disrupt the orderly and fair procedure established by the Pre-Trial Judge.

¹ Mémoires complémentaires à l'appui de la requête d'Uwinkindi Jean en annulation de l'ordonnance de renvoi, 12 August 2015 (confidential) (Supplemental Brief). Uwinkindi has labelled both his Supplemental Brief and his Original Brief as "confidential," although nothing in the content of those filings requires a confidential classification. The prosecution's 11 August 2015 Motion to Reclassify Uwinkindi Brief as Public is pending before the Trial Chamber.

² Scheduling Order, 22 May 2015.

³ Decision on Jean Uwinkindi's Request for Extension of Time and for Extension of the Word Limit, 22 July 2015 (22 July 2015 Decision).

⁴ The Scheduling Order initially set a 30-day time limit for the filing of Uwinkindi's brief; on 22 July 2015, the Pre-Trial Judge extended that time-limit by 14 days. 22 July 2015 Decision, paras. 2, 5.

⁵ 22 July 2015 Decision, para. 8.

⁶ Scheduling Order, p. 1; 22 July 2015 Decision, para. 8.

⁷ Practice Direction on Length of Briefs and Motions MICT/11, 6 August 2013, para. 15 (Practice Direction); Scheduling Order, p. 2.

⁸ Order for Expedited Responses and Reply to Jean Uwinkindi's Request for Stay of Proceedings, 11 August 2015 (11 August 2015 Order).

The Supplemental Brief amends Uwinkindi's Brief in support of the revocation request (Original Brief)⁹ and exceeds the word and time limits prescribed. Uwinkindi did not request permission in advance from the Trial Chamber to submit an additional filing or to exceed the applicable word and time limits. The Supplemental Brief, therefore, violates the Pre-Trial Judge's 22 July 2015 Decision¹⁰ as well as Rule 154(A) of the Mechanism's Rules of Procedure and Evidence¹¹ and paragraphs 15 and 17 of the Practice Direction on Length of Briefs and Motions (Practice Direction).¹²

Uwinkindi's violations of word and time limits

4. Uwinkindi's Supplemental Brief exceeds the authorized word limit. In the 22 July 2015 Decision, the Pre-Trial Judge expanded the word limit for Uwinkindi's brief: instead of the 3,000 words allowed under paragraph 15 of the Practice Direction, the Pre-Trial Judge allowed him to use 9,000 words.¹³ The Pre-Trial Judge explicitly stated that the 12,000 words requested by Uwinkindi¹⁴ were not necessary.¹⁵

5. Uwinkindi's Original Brief exhausted the 9,000 words allocated to him for that filing.¹⁶ His Supplemental Brief has approximately 1,800 words.¹⁷ Thus Uwinkindi has, between his Original Brief and his Supplemental Brief, filed close

⁹ Mémoire à l'appui de la requête d'Uwinkindi Jean en annulation de l'ordonnance de renvoi, 5 August 2015 (confidential) (Original Brief).

¹⁰ 22 July 2015 Decision, para. 8.

¹¹ Rules of Procedure and Evidence, Mechanism for International Tribunals, MICT/1, 8 June 2012, Rule 154(A) (Rules).

¹² Practice Direction, paras. 15, 17.

¹³ 22 July 2015 Decision, para. 6.

¹⁴ Applicant's Urgent Request for Extension of Time to File Brief in Support of Revocation Request, and for Extension of Word Limit, 17 July 2015, paras. 22, 27 (Motion for Extension).

¹⁵ 22 July 2015 Decision, paras. 7–8.

¹⁶ Brief, p. 27 (indicating the word limit as "9000").

¹⁷ This number is an estimate, since the Supplemental Brief, in violation of paragraph 18 of the Practice Direction, contains no word count.

to the 12,000 words that he initially asked for,¹⁸ notwithstanding the Pre-Trial Judge's explicit rejection of that request.¹⁹

6. Uwinkindi's Supplemental Brief also violates the applicable time limit. The Pre-Trial Judge ordered Uwinkindi to file a brief by 5 August 2015.²⁰ The Supplemental Brief, however, was filed on 12 August 2015, seven days after the prescribed deadline.

7. Moreover, Uwinkindi did not, in his Supplemental Brief, set out any reasons why good cause existed for his violations of the word- and time-limits. And he did not, in violation of Rule 154(A)²¹ and paragraph 17 of the Practice Direction, request authorization for filing seven days late; nor did he request authorization for exceeding the limit of 9,000 words imposed by the Pre-Trial Judge.

Jurisprudence supports striking Uwinkindi's Supplemental Brief

8. The *Nyiramasuhuko et al.* Appeals Chamber faced a situation similar to that presented by Uwinkindi's Supplemental Brief. In that case, appellant Nyiramasuhuko had filed a pleading not foreseen by the applicable Rules and procedure. That pleading contained additional arguments in support of her appellant's response and reply briefs. The Appeals Chamber struck this pleading because it impermissibly supplemented Nyiramasuhuko's appeal and reply briefs.²² For the same reason, the Trial Chamber should strike the Uwinkindi's Supplemental Brief.

9. The Appeals Chamber has also struck filings that exceeded the applicable word limits.²³ Although on one occasion the Appeals Chamber allowed the defence

¹⁸ Motion for Extension, paras. 22, 27.

¹⁹ 22 July 2015 Decision, para. 7.

²⁰ 22 July 2015 Decision, para. 8.

²¹ See 22 July 2015 Decision, para. 5.

²² *Prosecutor v. Pauline Nyiramasuhuko et al.*, case no. ICTR-98-42-A, Decision on Prosecution's Motion to Strike Nyiramasuhuko's Motion for Stay of Proceedings, 7 February 2014.

²³ *Callixte Nzabonimana v. the Prosecutor*, case no. ICTR-98-44D-A, Decision on Prosecution's Motions to Strike and for Extension of Time, and on Nzabonimana's Motions for Extension of Words and for Remedies, 17 June 2013; *Callixte Nzabonimana v. the Prosecutor*, Case No. ICTR-98-44D-A, Decision on Callixte Nzabonimana's Motion to Amend his Notice of Appeal and the

to re-file a response brief that exceeded the word-limit, provided that the re-filed brief was within the word-limit,²⁴ such a ruling is not necessary here, because the Uwinkindi's Original Brief, which complies with the word limit, has already been filed.

10. The Appeals Chamber has also struck pleadings because they were filed out-of-time. In *Munyarugarama*, it struck a reply brief that was filed out-of-time, holding that a reply, as an optional filing, was not necessary for the adjudication of the case.²⁵ Given that Uwinkindi's Supplemental Brief adds to arguments already made in the Original Brief, and given that the Pre-Trial Judge has not authorized its filing,²⁶ Uwinkindi cannot argue that the Supplementary Brief is necessary for the adjudication of the case. It should, therefore, be struck as out-of-time.

11. The remedies fashioned by the Appeals Chamber in past cases to address similar unauthorized filings that exceed word and time limits should apply with equal force here. Under the Pre-Trial Judge's Scheduling Order and Order for Expedited Submissions, the prosecution and Rwanda are in the midst of preparing their comprehensive responses to Uwinkindi's Original Brief. Those responses are due in only a few days or weeks. In the short time remaining, the prosecution and Rwanda should not have to devote limited resources to defend against the piecemeal litigation strategy Uwinkindi and his counsel seek to unilaterally impose, in contravention of the Pre-Trial Judge's explicit orders establishing strict word- and time-limits for these proceedings.

Prosecution's Motion to Strike Nzabonimana's Appeal Brief, 30 August 2013 (*Nzabonimana* Decision, 30 August 2013).

²⁴ *Nzabonimana* Decision, 30 August 2013, para. 31.

²⁵ *Phénéas Munyarugarama v. the Prosecutor*, case no. MICT-12-09-AR14, Decision on Appeal against the Referral of Phénéas Munyarugarama's Case to Rwanda and Prosecution Motion to Strike, 5 October 2012, para. 16.

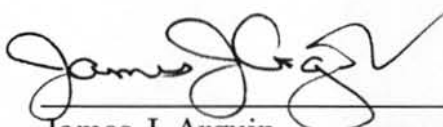
²⁶ Scheduling Order, 22 May 2015.

Conclusion

12. The Trial Chamber should strike Uwinkindi's Supplemental Brief as being unauthorized and in violation of the applicable word- and time-limits.

Word Count: 1360

Dated and signed this 14th day of August, 2015, at Arusha, Tanzania.



James J. Arguin
Chief, Appeals and Legal Advisory Division
(Pursuant to the MICT Prosecutor's 26 July
2012 Interim Designation)