



Mechanism for International Criminal Tribunals

Case No: MICT-13-43

Date: 04 March 2015

Original: English

**THE OFFICE OF THE PRESIDENT**

**Before: Judge Vagn Joensen**

**Registrar: Mr. John Hocking**

**THE PROSECUTOR**

**v.**

**F.X. NZUWONEMEYE**

---

**PROSECUTOR'S CONSOLIDATED RESPONSE TO MOTION FOR  
COMPENSATION AND DAMAGES FOR VIOLATIONS OF THE  
FUNDAMENTAL RIGHTS OF F.X. NZUWONEMEYE AND REQUEST FOR  
LEAVE TO EXCEED THE WORD LIMITS FOR MOTIONS FOR  
COMPENSATION AND DAMAGES FOR VIOLATIONS OF THE  
FUNDAMENTAL RIGHTS OF F.X. NZUWONEMEYE**

---

**Office of the Prosecutor**

Hassan Bubacar Jallow  
Richard Karegyesa  
Sunkarie Ballah-Conteh

**Counsel for F.X Nzuwonemeye**

Chief Charles Taku  
Beth S Lyons  
Tharcisse Gatarama

Received by the Registry  
Mechanism for International Criminal Tribunals

04/03/2015 16:35

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

## I. INTRODUCTION

1. On 23 February 2015, The Prosecutor was served with Nzuwonemeye's "Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X. Nzuwonemeye, pursuant to Security Council Resolution 1966". Nzuwonemeye requests the Chamber to grant him the sum of one million United States dollars as compensation commensurate to the fundamental violations of his fair trial rights, namely his right to be notified of the charges against him and his right to be tried without undue delay.
2. Having exceeded the applicable word limit for his submission by over a thousand words, Nzuwonemeye simultaneously filed an application for leave to exceed the word limit for his motion.<sup>1</sup>
3. The Prosecutor hereby files his consolidated response.

## II. SUBMISSIONS

4. As a preliminary matter, the Prosecutor submits that Nzuwonemeye's motion for compensation should not be entertained. Nzuwonemeye has exceeded the word limit for his application for compensation without having met the requisite standard for exceeding the word limit. While a party can be authorized to exceed the word limit set forth in the practice direction if he demonstrates "exceptional circumstances" that necessitate the oversized filing in advance of the filing date, Nzuwonemeye has not established the existence of such circumstances.<sup>2</sup>
5. Nzuwonemeye did not seek authorization to exceed the word limit in advance of the substantive filing.<sup>3</sup> His application for leave to exceed the word limit was filed together with his application for compensation. Moreover, Nzuwonemeye has failed to demonstrate that there are exceptional circumstances that warrant an oversized filing. He argues that the complexity of the issues raised in his motion, including the grave wrong that has been committed by his detention due to the abuse of his

---

<sup>1</sup>*Prosecutor v. F.X. Nzuwonemeye*, Case No. MICT-13-43, Request for Leave to Exceed the Word Limit for Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X. Nzuwonemeye, Pursuant to Security Council Resolution 1966, 18 February 2015.

<sup>2</sup>(MICT/11) Practice Direction on Lengths of Briefs and Motions, 6 August 2013; *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, ICTR-99-50-A, Decision on the Prosecution's Motion for an Extension of the Word Limit for its Respondent's Brief, 25 April 2012, para.12.

<sup>3</sup> (MICT/11) Practice Direction on Lengths of Briefs and Motions, 6 August 2013.

fundamental rights, the limited jurisprudence on the compensation issue and the interest of justice, justifies an extension of the word limit.<sup>4</sup>

6. Although the complexity of the case may in some instances justify an extension of the word limit,<sup>5</sup> Nzuwonemeye has failed to make this showing. His application rests on two issues; undue delay and lack of notice. Both issues have already been decided upon by the Appeals Chamber and do not warrant an extensive filing.<sup>6</sup> Further still, The Appeals Chamber has stated that "concision and cogency are the mark of an effective brief and that excessive length often frustrates the efficient administration of justice."<sup>7</sup> Nzuwonemeye's application for leave to exceed the word limit should be dismissed and his application for compensation should not be entertained.

7. On the merits, and without prejudice to the foregoing, Nzuwonemeye's claim for compensation should be dismissed. Compensation will only be awarded in exceptional circumstances where the court finds conclusive facts showing that there has been a "grave" and "manifest miscarriage of justice".<sup>8</sup> Nzuwonemeye has failed to make such a showing. His allegations of violations of his rights to a fair trial based on lack of notice and undue delay do not meet the threshold set by the jurisprudence of the Appeals Chamber.

### Undue Delay

8. Nzuwonemeye's assertion that he was denied the right to a fair and expeditious trial as provided for by Article 20 of the ICTR Statute is unsupported. Nzuwonemeye refers only to the length of the proceedings against him and the period spent in incarceration to support his allegations of undue delay, without taking cognizance of the factors relevant to an assessment of undue delay. The mere

<sup>4</sup>*Prosecutor v. F.X. Nzuwonemeye*, Case No. MICT-13-43, Request for Leave to Exceed the Word Limit for Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X. Nzuwonemeye, Pursuant to Security Council Resolution 1966, 18 February 2015, paras. 3-10.

<sup>5</sup>*Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, ICTR-99-50-A, Decision on the Prosecution's Motion for an Extension of the Word Limit for its Respondent's Brief, 25 April 2012, para.13.

<sup>6</sup>*Ndindiliyimana et al. v. Prosecutor*, Appeals Judgment, paras. 44-47, 157, 180, 209, 220.

<sup>7</sup>*Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A; Decision on Protais Zigiranyirazo's Motion for Variation of the Word Limits, 14 May 2009, para. 3; *Augustin Ndindiliyimana et al. v. the Prosecutor* Case No. ICTR-00-56-A, Decision on Bizimungu's and Nzuwonemeye's Motions for Extensions of the Word Limits for their Appellant's Briefs, 20 January 2012, para. 6.

<sup>8</sup>*Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-2001-01-073, 18 June 2012, para. 19.

fact that a trial is lengthy is insufficient to establish undue delay.<sup>9</sup> The length of the delay; complexity of the proceedings; the conduct of the parties; the conduct of the relevant authorities; and the prejudice to the accused, if any are all factors that should be taken into consideration when assessing undue delay.<sup>10</sup>

9. Nzuwonemeye argues that the length of time from his arrest to the final judgement and sentence exceeds what is reasonable.<sup>11</sup> He cites a number of cases where the Human Rights Committee and the European Court of Human Rights have found that a delay of 7 and 8 years between arrest and conviction in domestic courts was excessive.<sup>12</sup> However, as stated by the ICTR Appeals Chamber in *Nahimana et al.*, what constitutes undue delay depends on the circumstances of each case, and a reference to another case is helpful only if strong similarities are shown.<sup>13</sup> Nzuwonemeye has failed to show the similarities between his case and the cases cited. The cases cited to support his argument relate to proceedings before a domestic court and not before an international tribunal. The ICTR Appeals Chamber has recognized that, because of the Tribunal's mandate and of the inherent complexity of the cases before the Tribunal, it is not unreasonable to expect that the judicial process will not always be as expeditious as before domestic courts.<sup>14</sup>

10. Moreover, the Appeals Chamber has already rejected arguments of undue delay in relation to Augustin Ndingiyimana, one of Nzuwonemeye's co-accused. In concluding that there was no undue delay in the commencement and length of Ndingiyimana's trial, despite him having spent four years in detention prior to the commencement of the trial, The Appeals Chamber took into consideration the fact

---

<sup>9</sup>*Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, Case No. ICTR-99-50-A, 4 February 2013, Appeal Judgment, paras. 30 - 31.

<sup>10</sup>*Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, Case No. ICTR-99-50-A, 4 February 2013, Appeal Judgment, para. 30.

<sup>11</sup>*Prosecutor v. F.X. Nzuwonemeye*, Case No. MICT-13-43, Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X. Nzuwonemeye, Pursuant to Security Council Resolution 1966, 18 February 2015, paras. 2-3.

<sup>12</sup>*Prosecutor v. F.X. Nzuwonemeye*, Case No. MICT-13-43, Motion for Compensation and Damages for Violations of the Fundamental Rights of F.X. Nzuwonemeye, Pursuant to Security Council Resolution 1966, 18 February 2015, paras. 2-3.

<sup>13</sup>*Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Appeals Judgement, 28 November 2007, para.1076.

<sup>14</sup>*Ferdinand Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Appeals Judgement, 28 November 2007, para.1076.

that Ndindiliyimana was one of five co-accused charged on the same indictment and that the case was subject to extensive and complex pre-trial litigation.<sup>15</sup>

11. Nzuwonemeye, a co-accused of Ndindiliyimana, was arrested on 15 February 2000, two weeks after Ndindiliyimana and transferred to the seat of the Tribunal a month after Ndindiliyimana. He therefore spent a shorter period in detention compared to Ndindiliyimana. Like Ndindiliyimana, Nzuwonemeye spent four years in pre-trial detention. The trial began on 20 September 2004 and ended on 26 June 2009. The final judgement was delivered on 17 May 2011. Also like Ndindiliyimana, Nzuwonemeye was one of five co-accused charged in the same indictment and the case was the subject of extensive pre-trial and interlocutory litigation. In these circumstances, it stands to reason that if there was no undue delay in relation to Ndindiliyimana, there was likewise no undue delay in relation to Nzuwonemeye as his co-accused.

12. It also bears noting that the cases, in which the Appeals Chamber has found undue delay, have been relatively limited in scope and scale compared to Nzuwonemeye's case. Nzuwonemeye was tried along with three other people. He spent four years in pre-trial detention. The trial took 395 days to conclude, during which 216 witnesses were heard, 965 exhibits admitted and 292 interlocutory decisions rendered. The judgement was delivered almost two years after the closing arguments. From arrest to judgement, Nzuwonemeye spent approximately 11 years in detention.

13. Nzuwonemeye's case was particularly complex, due *inter alia* to the multiplicity of counts, the number of accused, witnesses and exhibits, and the complexity of the facts and the law. In finding that the seven year pre-trial delay in Gatete's case constituted undue delay, the Appeals Chamber recognized that a single accused case, such as Gatete's, cannot be compared to multi-accused trials, which run for years and involve hundreds of trial days, hundreds of witnesses and over a thousand exhibits.<sup>16</sup> In contrast, in Tharcisse Renzaho's case, the Appeals Chamber found that the seven year period between his arrest and delivery of the

---

<sup>15</sup>*Ndindiliyimana et al. v. Prosecutor*, Appeals Judgment, paras. 44-47.

<sup>16</sup>*Jean Baptiste Gatete v. The Prosecutor*, Case No. ICTR-00-61-A, Appeals Judgment, 9 October 2012, para. 29.

trial judgement did not amount to an undue delay, despite it being a single accused trial.<sup>17</sup>

### **Lack of Notice**

14. Nzuwonemeye's argument that he was unfairly tried and convicted at trial on the basis of a defective indictment that failed to notify him of the charges against him, is fundamentally flawed and generalizes the basis of his acquittal on appeal.

15. The Trial Chamber convicted Nzuwonemeye pursuant to Article 6(1) for ordering and aiding and abetting murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional protocol II in relation to the killing of the Prime Minister and also as a superior pursuant to Article 6(3) for the same killing based on the same facts. It further concluded that Nzuwonemeye was liable as a superior for murder as a crime against humanity and as a serious violation of Article 3 common to the Geneva Conventions and of Additional protocol II for the killing of the Belgian peacekeepers.

16. Of these convictions, only Nzuwonemeye's conviction for aiding and abetting the killings of the Prime Minister and his conviction pursuant to Article 6(3) for the killing of the Belgian soldiers were reversed based on a lack of notice. The Appeals Chamber found that Nzuwonemeye was sufficiently informed of the remaining charges for which he had been convicted at trial.<sup>18</sup> His argument must therefore fail as he has not demonstrated a serious violation of his fundamental right to be notified of the charges against him.<sup>19</sup>

17. In conclusion, the Prosecutor submits that Nzuwonemeye has failed to establish a serious violation of his fundamental rights, and that his claim for compensation should be dismissed.

**Dated at Arusha this 4<sup>th</sup> day of March 2015**

---

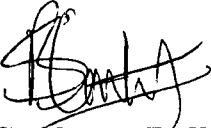
<sup>17</sup>*Tharcisse Renzaho v. The Prosecutor*, Case No. ICTR-97-31-A, Appeals Judgement, 1 April 2011, paras. 237-242.

<sup>18</sup>*Ndindiliyimana et al. v. Prosecutor*, Appeals Judgment, paras. 157, 180, 209, 220.

<sup>19</sup>*Prosecutor v. Rwamakuba*, Case No. ICTR-98-44C-A, Decision on Appeal Against Decision on Appropriate Remedy, 13 September 2007, paras. 29-30.



**Richard Karegyesa**  
**Senior Legal Officer**



**Sunkarie Ballah-Conteh**  
**Legal Advisor**

Word Count  
2027