

MICT-13-41-AR90

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UNITED
NATIONS



Mechanism for International Criminal Tribunals

Case MICT-13-40-AR90

Nos: MICT-13-41-AR90

Date: 11 April 2013

Original: English

APPEALS CHAMBER

Before:

**Judge Theodor Meron, Presiding
Judge Bakone Justice Moloto
Judge Christoph Flügge
Judge Burton Hall
Judge Liu Daqun**

Registrar:

Mr. John Hocking

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McCall Carter

In Re

**DEOGRATIAS SEBUREZE
and
MAXIMILIEN TURINABO**

PUBLIC

**PROSECUTION REPLY REGARDING APPLICATION
TO STAY APPEAL**

Office of the Prosecutor

Hassan Bubacar Jallow
James J. Arguin
Inneke Onsea
Steffen Wirth

Counsel for Deogratias Sebureze

Christopher Gosnell

Counsel for Maximilien Turinabo

Stéphane Bourgon

A. The prosecution has standing

1. Contrary to Turinabo's and Sebureze's claim, the prosecution has standing in the appeals proceedings initiated by them.¹ Since the prosecution was a party to the proceedings in which the order in lieu of indictment was issued², it has standing where this very order is re-litigated before the Appeals Chamber. The Prosecutor's standing in this matter is all the more apparent because, contrary to the ICTR Trial Chamber's direction,³ no *amicus* prosecutor has been appointed. If and when an *amicus* prosecutor is appointed, the Prosecutor may no longer need to participate in these proceedings. Until then, however, the Prosecutor is the only entity presently available to represent the substantial public interests at stake including the interests of the international community.⁴

B. The Appeals Chamber should stay the proceedings

2. The Appeals Chamber should grant the prosecution's motion to stay the proceedings.⁵ The suspects' contrary submissions fail to address the reason for this motion,⁶ namely, that it is more efficient for the Appeals Chamber to decide Turinabo's and Sebureze's appeals after the outcome of the proceedings concerning the Single Judge's decision is known.⁷ The suspects' artificial distinction between the subjects of their appeals and the subject of the proceedings regarding the Single Judge's decision has no bearing on this reason.⁸

¹ Response on Behalf of Maximilien Turinabo to ICTR Prosecutor's Application for Stay of the Appeal and for Directions Responding to the Appeal, 7 April 2013 (Turinabo Response), para. 15 (note that Turinabo erroneously referred to the prosecution's standing before the Single Judge—not the Appeals Chamber); Response to ICTR Prosecutor's Urgent Application for Stay of the Appeal and for Directions on Responding to the Appeal, 11 April 2013 (Sebureze Response), para. 5.

² The prosecution is listed as a party on the ICTR Trial Chamber's: Decision on Allegations of Contempt, 21 February 2013.

³ Decision on Allegations of Contempt, 21 February 2013 (ICTR decision), p. 6.

⁴ The Prosecutor must protect the public interest of the international community; see Prosecutor's Regulation No. 2, 14 September 1999, para. 2 a., h.; see also *Čelebići* Appeal Judgement, para. 623.

⁵ ICTR Prosecutor's Urgent Application for Stay of the Appeal and for Directions on Responding to the Appeal, 28 March 2013 (Prosecution Application).

⁶ Prosecution Application, para. 4.

⁷ Decision on Deogratias Sebureze and Maximilien Turinabo's Motions on the Legal Effect of the Contempt Decision and Order Issued by the ICTR Trial Chamber, 20 March 2013 (Single Judge's decision); this decision is currently challenged by: ICTR Prosecutor's Motion for Reconsideration of "Decision on Deogratias Sebureze and Maximilien Turinabo's Motions on the Legal Effect of the Contempt Decision and Order Issued by the ICTR Trial Chamber" dated 20 March 2013, 27 March 2013; and by ICTR Prosecutor's Interlocutory Appeal of "Decision on Deogratias Sebureze and Maximilien Turinabo's Motions on the Legal Effect of the Contempt Decision and Order Issued by the ICTR Trial Chamber" Dated 20 March 2013, 27 March 2013 (both proceedings are hereinafter referred to as: proceedings concerning the Single Judge's decision).

⁸ See Turinabo Response, paras. 8–13; Sebureze Response paras. 1–4.

3. Presently, the suspects' appeals are moot. The Single Judge declared that the ICTR decision challenged by the suspects' appeals has no effect before the MICT.⁹ Since the MICT is the only body who could prosecute the suspects, the ICTR decision has no practical effect. For this conclusion it is irrelevant, whether or not the subjects of the appeals and the reconsideration proceedings are different, as claimed by the suspects.¹⁰ All that matters is that the impugned ICTR decision is currently without effect and cannot burden them. There is, therefore, no decision that can be meaningfully subject to an appeal.

4. The appeals could become "live" again, if the Single Judge or the Appeals Chamber reverse the Single Judge's decision and thus resurrect the challenged ICTR decision. On the other hand, the appeals could also remain moot if the Single Judge denies the prosecution's motion for reconsideration and the Appeals Chamber upholds the Single Judge's decision.

5. Rather than proceeding with these presently moot appeals, the Appeals Chamber should stay its proceedings and await the outcome of the proceedings concerning the Single Judge's decision. Also, at this point in time, the parties do not know either, whether the Single Judge or the Appeals Chamber will rule first about the Single Judge's decision, nor do they know the contents of such a ruling. They are therefore not able to make informed submissions as to important matters in the appeals. Consequently, the parties should be allowed to file their remaining submission (response and reply) once the outcome of these proceedings is known. Nothing would be gained by continuing the proceedings and by forcing the parties to make immediate and uninformed submissions.

C. The Prosecution Application is not out of time

6. Contrary to Sebureze's claim, there is no time limit for an application to stay and therefore the Prosecution Application cannot be out of time.¹¹ Moreover, Sebureze's calculation of time makes little sense. He claims that when the prosecution filed its application on 28 March, this was "seventeen days" after the suspects' notices of appeal of 11 March 2013. He overlooks, however, that the triggering factor for the prosecution's application was not the filing of the notices of appeal but the Single Judge's decision of 20 March 2013. The Prosecution Application was filed eight days after that decision.

⁹ Single Judge's decision, p. 6.

¹⁰ Turinabo Response, paras. 2, 9, 12; Sebureze Response, paras. 2-3.

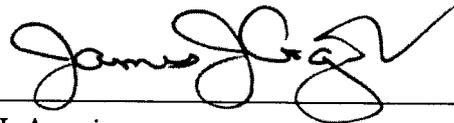
¹¹ Sebureze Response, para. 7.

7. In any case, if the Prosecution Application is out of time, so is Sebureze's response. That response was filed on 11 April, 14 days after the Application and thus outside the normal time limit for Responses on appeal.¹²

D. Conclusion

8. The Appeals Chamber should stay the appeals and provide the remainder of the remedies requested by the prosecution in its Application.¹³

Word count: 1042



James J. Arguin

Chief, Appeals & Legal Advisory Division

Dated this 11th day of April 2013, at Arusha,
Tanzania

¹² Practice Direction Related to Appeals, MICT/4, 5 July 2012, para. 1, in conjunction with Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, 8 December 2006, para. 13 (note, however, that, technically, para. 13 only applies for responses filed during appeals from judgement; the Sebureze's appeal is not an appeal from judgement).

¹³ Prosecution Application, paras. 7-9.



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