



UNITED NATIONS
NATIONS UNIES

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Order of: 13 May 2010

THE PROSECUTOR

v.

Ephrem SETAKO

Case No. ICTR-04-81-A

ORDER TO THE REGISTRAR

Counsel for Ephrem Setako:

Prof. Lennox Hinds
Ms. Claire Gilchrist, Assistant
Ms. Juliette Chinaud, Assistant

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Ms. Deborah Wilkinson

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);

NOTING that Trial Chamber I of the Tribunal pronounced its judgement against Mr. Setako on 25 February 2010 and on 1 March 2010 issued its reasoned opinion in writing;¹

NOTING the Notice of Appeal filed by the Prosecution on 29 March 2010;²

NOTING that on 31 March 2010 Mr. Setako submitted, by e-mail, his Notice of Appeal for filing to a staff member of the Registry,³ but because this staff member was on leave at the time, Setako’s Notice of Appeal was filed on 12 April 2010;⁴

NOTING that the Appeals Chamber is seized of a Prosecution motion, filed on 19 April 2010, to dismiss the Setako’s Notice of Appeal⁵ on the ground that it was filed out of time, in which the Prosecution submits, *inter alia*

- that, by sending the Setako Notice of Appeal by e-mail, Mr. Setako used “a mode of transmission that is not provided for in the Rules of Procedure and Evidence or in the Directive for the Registry of the ICTR”;⁶
- that the staff member to whom Mr. Setako sent the Setako Notice of Appeal was not one of the staff members whom the Registry had indicated in a fax addressed to Mr. Setako’s Defence Counsel as servicing issues related to his appeal proceedings.⁷

¹ *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, Judgement and Sentence, dated 25 February 2010 and filed on 1 March 2010.

² Notice of Appeal, 29 March 2010. On 31 March 2010, the Prosecution filed a Corrigendum to its Notice of Appeal. See Corrigendum to Prosecutor’s Notice of Appeal, 31 March 2010.

³ Notice of Appeal, 12 April 2010 (“Setako’s Notice of Appeal”).

⁴ See Interoffice Memorandum addressed to Mr. Koffi Afande, Appeals Chamber Support Unit, The Hague, Netherlands, Ref: ICTRYJUD-11-6-1-101021, 12 April 2010.

⁵ Motion to Dismiss Defendant’s Notice of Appeal, 19 April 2010 (“Prosecution Motion”). On 20 April 2010, the Prosecution filed a Corrigendum to the Motion. See Corrigendum to Motion to Dismiss Defendant’s Notice of Appeal, 20 April 2010 (“Corrigendum”). The Prosecution includes Annexes 1 to 7 in the Corrigendum.

⁶ Prosecution Motion, para. 12. See Article 27(1) of the Directive for the Registry of the International Criminal Tribunal for Rwanda, (14 March 2008) (“Directive for the Registry”).

⁷ Prosecution Motion, para. 8, *referring to* Annex 4. See Corrigendum, Annex 4 (Facsimile Transmission addressed to Mr. Setako’s Defence Counsel, Ref: ICTR/JUD/11-6-1-10/016, 17 March 2010).

NOTING Mr. Setako's response to the Prosecution Motion filed on 29 April 2010,⁸ in which he contends, *inter alia*, that, in filing his Notice of Appeal he followed the established practice of the Tribunal, which, according to him, also contemplates the sending of official documents by e-mail, and that the staff member to whom he sent it is indicated as the only contact for the Appeals Chamber in Arusha in the Transmission Sheet for Filing of Documents provided by the Court Management Section of the Tribunal;⁹

CONSIDERING that Article 27(1) of the Directive for the Registry, which provides that "[d]ocuments may be delivered to the Court Management Section by hand, by fax or by post" does not explicitly list electronic mail as a mode of transmission for the delivery of documents to the Court Management Section;

NOTING Rule 117*ter* of the Rules of Procedure and Evidence ("Rules") on the Filing of the Appeal Documents;

RECALLING Article 45 of the Directive for the Registry, and in particular Article 45(4), which provides that "Ftǵhe Appeals Officer is responsible for the expeditious management, filing, reproduction and distribution of all appeal documents;"

CONSIDERING that, for the purpose of deciding the merits of the Prosecution Motion, the Appeals Chamber would benefit from the Registrar's clarification of the procedure and practice concerning the filing of submissions on appeal;

FOR THE FOREGOING REASONS,

HEREBY REQUESTS the Registrar, pursuant to Rule 33(B) of the Rules, to submit written submissions

- a. on the circumstances of the filing of Setako's Notice of Appeal;
- b. to clarify whether the Registry accepts filings made by e-mail;
- c. to clarify, in light of Rule 117*ter* of the Rules and Article 45 of the Directive for the Registry, to whom submissions on appeal should be addressed for filing.

⁸ Response to Prosecutor's Motion to Dismiss Appellant's Notice of Appeal, 29 April 2010 ("Response").

⁹ Response, para. 15, *referring to* Annex 3 of the Response. The Prosecution filed its reply on 3 May 2010. *See* Prosecutor's Reply to Defendant's Response to Motion to Dismiss Defendant's Notice of Appeal, 3 May 2010.

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

Judge Patrick Robinson
Presiding Judge

Dated this thirteenth day of May 2010,
At The Hague, The Netherlands.

[Seal of the Tribunal]