

UNITED
NATIONS



Mechanism for International
Criminal Tribunals

Case No: MICT-12-25-AR14.1

Date: 24 November 2015

Original: English

APPEALS CHAMBER

Before: A Bench of the Appeals Chamber

Registrar: Mr. John Hocking

PROSECUTOR

v.

JEAN UWINKINDI

PUBLIC

**PROSECUTION'S MOTION TO STRIKE
NOTICE OF APPEAL**

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

Counsel for Jean Uwinkindi:
Gashabana Gatera

**Received by the Registry
Mechanism for International Criminal Tribunals**

24/11/2015 18:53

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I. INTRODUCTION

1. The Trial Chamber's decision of 22 October 2015 was already final, and the revocation proceedings concluded, 14 days before Uwinkindi filed his Notice of Appeal (Notice). The Appeals Chamber should, therefore, reject his attempt to reopen his case by initiating an appeal out-of-time.¹

2. The decision rejecting Uwinkindi's request for revocation was issued on 22 October 2015 and received by his counsel the same day. Under the applicable law,² Uwinkindi had 15 days from that date—until 6 November 2015—to file a notice of appeal. His Notice of 20 November 2015 is thus 14 days late. Uwinkindi provides no explanation, let alone good cause, for this delay. Therefore, following the controlling jurisprudence of the Appeals Chamber, his Notice should be dismissed.

II. ARGUMENT

3. Uwinkindi's filing is out of time. The MICT Appeals Chamber has held that appeals against revocation decisions are governed by the same time limits as those set out in Rule 14(E) for appeals against referral decisions.³ Under Rule 14(E) and paragraph 21 of the applicable Practice Direction,⁴ Uwinkindi had 15 days from the issuance of the Trial Chamber's revocation decision to file his Notice.

¹ Acte d'appel de la defense de Jean Uwinkindi, 20 November 2015 (Notice).

² *Prosecutor v. Radovan Stanković*, case no. MICT-13-51, Decision on Stanković's Appeal against Decision Denying Revocation of Referral and on the Prosecution's Request for Extension of Time to Respond, 21 May 2014, para. 10 (*Stanković* Decision).

³ *Stanković*, Decision, para. 10.

⁴ Practice Direction on Requirements and Procedures for Appeals, MICT/10, 6 August 2013, para. 21 (Practice Direction).

4. Uwinkindi's counsel received the decision on 22 October 2015, the same day it was issued.⁵ The deadline for filing an appeal therefore expired on 6 November 2015. With no notice of appeal having been filed within the applicable deadline, on the following day, 7 November 2015, the Trial Chamber's decision became final.⁶ Consequently, Uwinkindi's Notice of 20 November 2015 is an attempt to reopen proceedings that have already concluded. He has not applied for an extension of time or provided any good cause for the delayed filing.

5. Uwinkindi's counsel was expected to familiarize himself and comply with the applicable time limits for filing a notice of appeal.⁷ The Appeals Chamber's *Haxhiu* Decision is on point here. Haxhiu, who was represented by counsel, had been convicted of contempt and had filed a notice of appeal 26 days after the decision convicting him was issued. In responding to the prosecution's motion to strike the notice of appeal, Haxhiu argued that the 30-day deadline for appeals from judgements should govern. The Appeals Chamber, however, observed that in a previous case it had explicitly ruled that the controlling deadline for appeals from contempt proceedings was 15 days, and that Haxhiu's counsel was expected to have acquainted himself with that jurisprudence.⁸ Considering that trial chamber decisions become final if not appealed, the Appeals Chamber also emphasized that "parties cannot reopen proceedings

⁵ Notice, para. 2.

⁶ See, e.g., *Prosecutor v. Zoran Kupreškić*, case no. IT-95-16-T, Judgement, Section VIII, D.

⁷ There is no legal basis for the assumption in the Notice, para. 8, that the time limits for appealing judgements would apply to the Trial Chamber's Decision. In fact, even paragraph 21 of the Applicable Practice Direction strongly suggests that a 15 day timeline applies to all appeals from decisions made under Rule 14.

⁸ *Prosecutor v. Baton Haxhiu*, case no. IT-04-84-R77.5-A, Decision on Admissibility of Notice of Appeal against Trial Judgement, 4 September 2008, paras. 14, 15 (*Haxhiu* Decision).

at will.”⁹ The Appeals Chamber concluded that no good cause existed for Haxhiu’s late filing.¹⁰

6. *Haxhiu* controls the outcome here. Like Haxhiu, Uwinkindi is represented by counsel who is expected to know the applicable jurisprudence. Like *Haxhiu*, previous jurisprudence has established the applicable time limits for appeal. Also as in *Haxhiu*, Uwinkindi filed out of time, and is, thus, trying to reopen a closed case. Moreover, Uwinkindi, like Haxhiu, has not provided good cause for his out-of-time filing. Finally, the delay in filing Uwinkindi’s Notice is greater than in *Haxhiu* (Haxhiu’s notice was 11 days out of time; Uwinkindi’s is 14 days out of time).

7. The Appeals Chamber has consistently emphasized the need for parties to comply with the time limits for filing notices of appeal. In *Kayishema and Ruzindana*, it rejected a prosecution appeal that was filed out of time when no showing of good cause was provided, holding that “[v]iolations of ... time-limits, unaccompanied by any showing of good cause, will not be tolerated.”¹¹

8. While the Appeals Chamber has from time to time accepted belated notices of appeal as validly filed, in those instances it found that a showing of good cause had been made.¹² For example, the Appeals Chamber has held that a delay in service of the appealed decision constitutes good cause for a delay in filing a notice of appeal.¹³ No such delay in service occurred in Uwinkindi’s

⁹ *Haxhiu* Decision, para. 16.

¹⁰ *Haxhiu* Decision, para. 15.

¹¹ *Prosecutor v. Clément Kayishema et al.*, case no. ICTR-95-1-A, Judgement, 1 June 2001, para. 46.

¹² *Prosecutor v. Mikaeli Muhimana*, case no. ICTR-95-1B-A, Order Concerning the Filing of the Notice of Appeal, 22 February 2006, registry pagination 42/H; *Prosecutor v. Athanase Seromba*, case no. ICTR-2001-66-A, 22 March 2007, Order Concerning the Filing of the Notice of Appeal, p. 3.

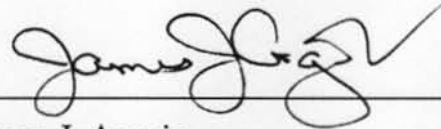
¹³ See fn. 12.

case, nor are there any other circumstances present that could be construed as good cause for his delay.

9. The Appeals Chamber should, therefore, strike Uwinkindi's Notice of Appeal as being inadmissible.

Word Count: 919

Dated this 24th day of November 2015 at Arusha, Tanzania.

A handwritten signature in black ink, appearing to read 'James J. Arguin', written over a horizontal line.

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