

**UNITED
NATIONS**

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

ICTR
CRIMINAL REGISTRY
RECEIVED
Case No: ICTR-97-19-72
Date: 5 February 1999
Original: English
1999 FEB -5 P 9:23

IN THE APPEALS CHAMBER

Before: Judge Gabrielle Kirk McDonald, Presiding
Judge Mohamed Shahabuddeen
Judge Lal Chand Vohrah
Judge Wang Tieya
Judge Rafael Nieto Navia

Registrar: Mr. Agwu U. Okali

Decision of: 5 February 1999

JEAN-BOSCO BARAYAGWIZA

v.

PROSECUTOR

DECISION AND SCHEDULING ORDER**The Office of the Prosecutor:**

Mrs. Jane Adong Anywar
Mr. William Egbe
Mr. Mathias Marcussen

Counsel for the Appellant:
Mr. Justry P.L. Nyaberi

Case No. ICTR-96-12-A

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME 1999 COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS	
NAME / NOM: <i>Dr. MIN DUA... K... M... Antoine</i>	
SIGNATURE: <i>[Signature]</i>	DATE: <i>07.02.1999</i>

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 ("the Appeals Chamber" and "the Tribunal" respectively),

NOTING the "Notice of Appeal" of the Appellant dated 27 November 1998 and filed on 11 December 1998 under Article 24 of the Statute of the Tribunal and Rules 72, 107 and 108 of the Rules of Procedure and Evidence as amended ("the Rules");

NOTING the "Decision on the Extremely Urgent Motion by the Defence for Orders to Review and/or Nullify the Arrest and Provisional Detention of the Suspect," ("the Decision") undated but filed in the Registry on 17 November 1998; and noting that the Decision was dated 17 November 1998 by a Corrigendum dated 24 November 1998 and filed with the Registry on 25 November 1998;

NOTING the "letter of the Appellant to the President of the Appeals Chamber dated 27 November 1998", ("the letter") and received at the ICTR on 4 December 1998, but filed on the 8 November 1998, whereby the Appellant indicated his intention to appeal against the Decision;

NOTING the "Prosecutor's Response to the Defence's Appeal of the Decision of the Trial Chamber II on the Extremely Urgent Motion by the Defence for Orders to Review and/or nullify the Arrest and Provisional Detention of the Suspect (17 November 1998)" ("the Prosecutor's Response"), dated and filed on 14 December 1998, and the "Prosecutor's Motion to Reject the Defence Appeal of the Decision of Trial Chamber II" ("the Prosecutor's Motion"), dated 15 December 1998 and filed on 18 December 1998;

CONSIDERING that Sub-Rule 72(D) of the Rules provides that decisions on preliminary motions are without interlocutory appeal save in the case of dismissal of an objection based on lack of jurisdiction where an appeal lies as of right;

CONSIDERING FURTHER that Sub-Rule 72(E) requires that the notice of appeal envisaged in Sub-Rule 72(D) shall be filed within seven days of the impugned Decision;

DEEMING the letter as a Motion to Extend time under Rule 116 of the Rules, and finding that, in the circumstances, there is good cause for deeming the Notice of Appeal as having been timely filed;

CONSIDERING that the Appellant challenged before the Trial Chamber the legality of his detention thus raising the issue of whether the Tribunal has personal jurisdiction over him;

FINDING that the Decision dismissed an objection based on the lack of personal jurisdiction over the accused and, therefore, an appeal lies as of right under Sub-Rule 72(D);

HEREBY ORDERS the Parties to submit written briefs within 14 days and to address, *inter alia*, the issue of whether the Appellant was unlawfully in the custody of the Tribunal before his transfer to its detention unit.

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


Gabrielle Kirk McDonald
Presiding Judge

Dated this fifth day of February 1999
At The Hague
The Netherlands.

