



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

Case No: ICTR-98-40-A

Date: 3 June 1999

Original: English

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: 3 June 1999

BERNARD NTUYAHAGA

v.

THE PROSECUTOR

1999 JUN - 3 P 4: 27
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DECISION REJECTING NOTICE OF APPEAL

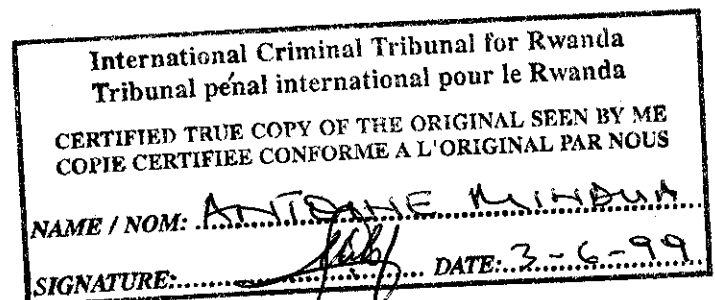
Counsel for the Appellant:

Mr. Georges Komlavi Amegadjie

The Office of the Prosecutor:

Mr. Mohamed Othman

Mr. James Stewart.



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 neighboring States, between 1 January and 31 December 1994 (“the Appeals Chamber” and “the Tribunal” respectively);

NOTING the “Decision on the Prosecutor’s Motion to Withdraw the Indictment”, “the Decision” of 18 March 1999, in which Trial Chamber I granted the “Prosecutor’s Motion Under Rules 51 and 73 to Withdraw the Indictment Against the Accused”, and ordered the immediate release of the Accused;

NOTING the “Notice of Appeal”, filed by Appellant on 22 March 1999, and the “Requete en extreme urgence aux fins de sursis a l’execution immediate de la Decision rendue par la premiere Chambre de premiere instance le 18 Mars 1999 dans l’affaire ‘Bernard Ntuyahaga contre le Procureur du TPIR’, filed on 23 March 1999 English version filed 29 April 1999;

NOTING the “Prosecutor’s Response to ‘Defence’s Notice of Appeal of Trial Chamber’s Decision of 18 March 1999”, filed 15 April 1999;

CONSIDERING Article 24 of the Statute and in particular Sub-rule 72(D) of the Rules of Procedure and Evidence of the Tribunal which provide for right of appeal by persons convicted by the Trial Chamber or on an interlocutory appeal challenging lack of jurisdiction of a Trial Chamber;

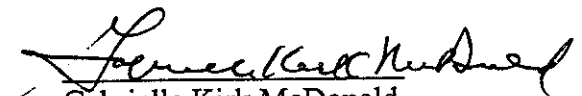
NOTING that the Trial Chamber did not convict the Appellant within the meaning of Article 24(1) of the Statute;

FURTHER NOTING that the Appellant is not challenging the jurisdiction of the Trial Chamber under Sub-rule 72(D) of the Rules, in which case an appeal could lie as of right;

FINDING, accordingly, that there is no right of appeal against the Decision;

HEREBY REJECTS the Notice of Appeal.

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


Gabrielle Kirk McDonald
Presiding Judge

Judge Shahabuddeen appends a Dissenting Opinion

Dated this third day of June 1999
At Arusha
Tanzania



[Seal of the Tribunal]



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Registrar: Mr. Agwu U. Okali

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1999 JUN - 3 P 3:07
ICTR
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BERNARD NTUYAHAGA

v.

THE PROSECUTOR

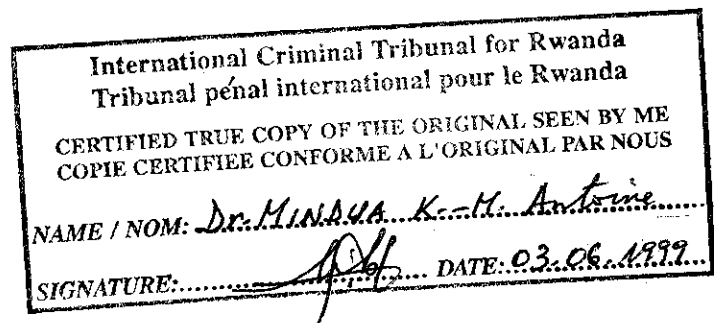
DISSENTING OPINION OF JUDGE SHAHABUDDEEN

Counsel for the Appellant:

Mr. Georges Komlavi Amegadjie

The Office of the Prosecutor:

Mr. Mohamed C. Othman
Mr. James Stewart



The Presiding Judge of Trial Chamber I was recorded as saying:

[w]e understand very clearly your opinion. You oppose the withdraw and you are actually asking for a verdict of innocence and acquittal.¹

Whether the requested acquittal was legally possible does not affect the fact that the substance of the matter was that the appellant was, on a fair interpretation, objecting to the jurisdiction of the Trial Chamber to grant leave for the withdrawal of the indictment; in his view, its only power was to record a verdict of acquittal. The importance of the right which he claimed is obvious, regard being had to the possibility of raising *ne bis in idem* in bar to any subsequent prosecutions.

I think the appellant fell to be considered as making a preliminary objection within the meaning of Rule 72(B)(i) of the Rules and that he has a right of interlocutory appeal under paragraph (D) of that rule. Accordingly, I respectfully dissent from the decision of the Appeals Chamber.



Mohamed Shahabuddeen
Judge

Dated this third day of June 1999 at
Arusha
Tanzania



[Seal of the Tribunal]

¹ Unofficial transcripts, 16 March 1999, p. 83.



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Date: 4 June 1999

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IN THE APPEALS CHAMBER

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Judge Mohamed Shahabuddeen
Judge Lal Chand Vohrah
Judge Wang Tieya
Judge Rafael Nieto-Navia

Registrar: Mr. Agwu U. Okali

Decision of: 3 June 1999

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BERNARD NTUYAHAGA

v.

THE PROSECUTOR

DISSENTING OPINION OF JUDGE SHAHABUDEEN/Corr.

Counsel for the Appellant:

Mr. Georges Komlavi Amegadjie

The Office of the Prosecutor:

Mr. Mohamed C. Othman
Mr. James Stewart

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS	
NAME / NOM: <i>Dr. M. I. A. M. K. M. M. Antonio</i>	
SIGNATURE: <i>[Signature]</i>	DATE: <i>07.06.1999</i>

In the first paragraph of the aforementioned Dissenting Opinion, replace the word “ne” with the word “non.”



Mohamed Shahabuddeen
Judge

Dated this fourth day of June 1999 at
Arusha
Tanzania



[Seal of the Tribunal]