

Tribunal Pénal International pour le Rwanda International Criminal Tribunal for Rwanda

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1CTR-97-22-A 17-APR-2000 (150-148)

IN THE APPEALS CHAMBER

Before:

Judge Claude JORDA, Presiding

Judge Lal Chand VOHRAH

Judge Mohamed SHAHABUDDEEN

Judge Rafael NIETO-NAVIA

Judge Fausto POCAR

Registrar:

Mr. Agwu U OKALI

Decision of:

13 April 2000

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Arsène Shalom NTAHOBALI

(Appellant)

THE PROSECUTOR

(Respondent)

Case No.: ICTR-97-21-A

DECISION

(APPEAL AGAINST TRIAL CHAMBER II'S DECISION OF 5 OCTOBER 1999)

Counsel for Arsène NTAHOBALI

Ms. Frédérique POITTE

Ms. Dominique TRICAUD

Counsel for the Prosecutor

Mr. Japhet D MONO

Mr. Ibukunolu A. BABAJIDE

Mrs. Céline TONYE

Ms. Andra MOBBERLEY

Ms. Sola ADEBOYEJO

Ms. Nadira BAYAT

International Criminal Tribunal for Rwanda Tribunal penal international pour le Rwanda

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SIGNATURE: SUANGUELL... DATE:

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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 I January and 31 December 1994 ("the Tribunal"),

NOTING the "Decision on the Prosecutor's Motion for Joinder of Trials" ("the Decision"), issued by Trial Chamber II ("the Trial Chamber") on 5 October 1999, pursuant to Rule 48 of the Rules of Procedure and Evidence of the Tribunal ("the Rules"), granting the "Prosecutor's Motion for Joinder" ("the Joinder Motion") and ordering the joint trial of the accused Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi and Elie Ndayambaje;

NOTING the French translation of the Decision, filed on 25 October 1999 and transmitted to the accused Arsène Shalom Ntahobali and his Defence Counsel on 26 October 1999, as demonstrated by the attached transmission sheet;

NOTING the "Déclaration d'appel", filed on 19 October 1999 by Defence Counsel for the accused Arsène Shalom Ntahobali ("the Appellant");

NOTING the "Avis d'appel relativement à une exception d'incompétence (Article 72 D) du Règlement de preuve et de procédure demande de report de delais (116 du Règlement de Procédure et de Preuve)", filed on 19 October 1999, in which the Appellant requests, pursuant to Rule 116, an extension of the time-limit within which to appeal against the Decision ("the Request for Extension of Time");

CONSIDERING that it is unnecessary for the Appeals Chamber to rule upon the Request for Extension of Time since the Notice of Appeal was filed within the time-limit set out in Subrule 108(B) of the Rules then in force;

NOTING the "Appel relatif à l'exception d'incompétence de la Chambre de première instance II statuant, le 5 octobre 1999, sur la jonction de l'instance de monsieur Ntahobali avec celles de madame Nyiramusuhuko et de messieurs Nzabimana, Nteziryayo, Kanyabashi

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et Ndajambaje Article 72, 108(B) et 117 du Règlement de preuve et de procédure", filed by the Appellant on 4 November;

NOTING the "Prosecutor's Motion for Summary Rejection of the Defence's Notice of Appeal Relating to an Objection Based on Lack of Jurisdiction", filed on 23 December 1999;

NOTING that the Appellant opposed the granting of the Joinder Motion, *inter alia*, on the ground that the Trial Chamber could not hear the Joinder Motion before the expiration of the time-limit set out in Sub-rule 72(A), which he characterised as a jurisdictional issue;

CONSIDERING that a right of appeal against an interlocutory decision of a Trial Chamber arises only out of a decision on a preliminary motion, brought under Rule 72, dismissing an objection based on lack of jurisdiction;

CONSIDERING that the objections dismissed by the Decision were not based on lack of jurisdiction, as defined by Rule 72(D) in force at the time;

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

CONSEQUENTLY REJECTS the appeal.

OU TOTAL THE THE THEOLOGY

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

Claude Jorda
Presiding

Dated this thirteenth day of April 2000 At The Hague, The Netherlands.



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