



UNITED NATIONS  
NATIONS UNIES



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

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IN THE APPEALS CHAMBER

Before: Judge Claude JORDA, Presiding,  
Judge Lal Chand VOHRAH  
Judge Mohamed SHAHABUDEEN  
Judge Rafael NIETO-NAVIA  
Judge Fausto POCAR

Registrar: Mr. Agwu U OKALI

Decision of: 12 July 2000

JUDICIAL RECORDS ARCHIVES  
ICTR  
RECEIVED

2000 JUL 12 P 6 28

Samuel IMANISHIMWE  
(Appellant)

v

THE PROSECUTOR  
(Respondent)

Case No.: ICTR-97-36-AR72

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**DECISION**  
(MOTION FOR REVIEW)

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Counsel for Samuel IMANISHIMWE

Ms. Marie Louise Mbida Kanse TAH  
Mr. Georges SO'O

Counsel for the Prosecutor

Mr. Léonard Assira ÉNGOUTÉ  
Ms. Liliane RASENDRA  
Mr. Richard KAREGYESA  
Ms. Alexandra HARVEY

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

**NOTING** the “Motion by Defence Counsel for Samuel Imanishimwe Lodging an Interlocutory Appeal Regarding the Jurisdiction of Trial Chamber III” (“the Notice of Appeal”), filed on 3 November 1999 by Samuel Imanishimwe (“the Appellant”) against a decision of Trial Chamber III dated 11 October 1999 (“the Impugned Decision”);

**NOTING** the “Decision (Appeal against Trial Chamber III’s Decision of 11 October 1999)” (“the Decision”), issued by the Appeals Chamber on 13 April 2000, which rejected the Notice of Appeal as filed out of time based on a fax transmission sheet which indicated that the Impugned Decision had been transmitted to the Appellant on 26 October 1999;

**NOW BEING SEISED OF** a “Motion for Revision or Reconsideration of the April 13, 2000 Ruling for Materiel Error”, filed by the Appellant on 20 April 2000 (“the Motion for Review”), in which the Appellant prays the Appeals Chamber to revise the Decision and reconsider the appeal, and to which he attaches evidence to show that the Impugned Decision was in fact transmitted to him on 27 October 1999;

**NOTING** the “*Réponse du Procureur à la requête de la défense de Samuel Imanishimwe aux fins de révision ou de réexamen de l’arrêt du 13 avril 2000 pour erreur matérielle*”, filed by the Prosecutor on 28 April 2000, opposing the Motion for Review;

**CONSIDERING** that only a final judgement or a decision on an interlocutory appeal which terminates proceedings may be reviewed pursuant to Article 25 of the Statute of the Tribunal and to Rule 120 of the Rules;<sup>1</sup>

<sup>1</sup> See Case No. ICTR-97-19-AR72 *Jean-Bosco Barayagwiza v the Prosecutor*, “Decision (Prosecutor’s Request for Review or Reconsideration)”, 31 March 2000, paragraph 49.

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**CONSIDERING** that the Decision is not a final judgement, nor does it terminate proceedings upon interlocutory appeal;

**CONSIDERING HOWEVER** that the Appeals Chamber may exercise its inherent power to reconsider interlocutory decisions in such cases as these, where a clear error has been exposed;

**FINDING** on the basis of the evidence attached to the Motion for Review that the Notice of Appeal was in fact filed in time;

**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 by an accused under Rule 72, dismissing an objection based on lack of jurisdiction;

**NOTING** that the Impugned Decision in this case was taken on a preliminary motion filed by the Prosecutor, rather than the Appellant, but that the Appellant raised objections to the Prosecutor's preliminary motion which were dismissed by the Impugned Decision;

**NOTING** that these objections were founded, *inter alia*, on the ground that the Prosecutor had not complied with an earlier order of Trial Chamber II with regard to the amendment of the indictment against the Appellant ("the earlier order"), or in the alternative that, the earlier order having been made by Trial Chamber II, Trial Chamber III was not competent to pronounce on compliance with the earlier order;

**NOTING** that this argument was characterised by the Appellant in the Notice of Appeal as a jurisdictional issue;

**CONSIDERING HOWEVER** that this argument, and hence the objections dismissed by the Impugned Decision, was not based on lack of jurisdiction in the terms of Rule 72 in force at the time;

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

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**HEREBY REJECTS** the Notice of Appeal.

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

s./

Claude Jorda  
Presiding

Dated this twelfth day of July 2000  
At The Hague,  
The Netherlands.

**[Seal of the Tribunal]**