



UNITED NATIONS
NATIONS UNIES

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

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TRANSLATION

ICTR 97-36-AR72

07.09.2000

(54/H bis - 51/H bis)

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: 7 September 2000

ICTR Appeals Chamber
Date: 7/Sept./2000
Action: PG
Copied To: All Judges, Parties,
ALDs, Judicial Archives,
Arusha, Detainees,
MB, KM
[Signature]

Emmanuel BAGAMBIKI
(Appellant)
v.
THE PROSECUTOR
(Respondent)

Case No.: ICTR 97-36-AR72

DECISION

(MOTION TO RE-OPEN DELIBERATIONS)

Counsel for Emmanuel BAGAMBIKI

Mr. Vincent LURQUIN

Counsel for the Prosecutor

Mr. Léonard Assira ÉNGOUTÉ
Mr. Don WEBSTER
Mr. Richard KAREGYESA
Mr. Alexandra HARVEY

JUDICIAL RECORDS/ARCHIVES
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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 the Defence for Emmanuel Bagambiki lodging an interlocutory appeal on the jurisdiction of Trial Chamber III” (“the Notice of Appeal”), filed on 4 November 1999 by the accused Emmanuel Bagambiki (“the Appellant”) against Trial Chamber III’s “Decision on the Prosecutor’s Motion for Joinder” issued on 11 October 1999 (“the Impugned Decision”);

NOTING the “Decision (Appeal against Trial Chamber III’s Decision of 11 October 1999)” issued by the Appeals Chamber on 13 April 2000 (“the Decision”), 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 by the Defence for Emmanuel Bagambiki Seeking a Reopening of the Deliberations” filed by the Appellant on 13 June 2000 (“the Motion to Re-open Deliberations”), in which the Appellant prays the Appeals Chamber to annul the Decision and to re-open proceedings on the basis that the Notice of Appeal was not filed out of time;

NOTING the “*Mémoire du Procureur en réponse à la Requête de la Défense d’Emmanuel BAGAMBIKI aux fins de réouverture des débats*” filed by the Prosecutor on 19 June 2000 opposing the Motion to Re-open Deliberations;

NOTING that the Motion to Re-open Deliberations is based on two assertions, namely that the Impugned Decision was transmitted to the Appellant on 28 October 1999 rather than 26 October 1999 (“the first assertion”), and that the Notice of Appeal was filed on 3 November 1999 rather than 4 November 1999 (“the second assertion”);

NOTING the copy of the Impugned Decision faxed to the Appellant's counsel annexed to the Motion to Re-open Deliberations in support of the first assertion, which bears a transmission date of 28 October 1999;

CONSIDERING that the first assertion is proven and that the time limit for filing the Notice of Appeal therefore expired on 4 November 1999;

CONSIDERING that the second assertion is thus rendered moot;

FINDING that the Notice of Appeal was in fact filed in time;

CONSIDERING however 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;

NOTING that the Impugned Decision in this case was rendered on a motion for joinder filed by the Prosecutor under Rule 73, but that the Appellant raised objections to the Prosecutor's motion which were dismissed by the Impugned Decision:

NOTING that, according to the Appellant, 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;

HEREBY CONFIRMS the rejection of the Notice of Appeal.

51/H bis

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

Claude Jorda
Presiding

Dated this seventh day of September 2000
At The Hague,
The Netherlands.

[Seal of the Tribunal]