

698/H/bis



UNITED NATIONS  
NATIONS UNIES



Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda

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 September 2000

2000 SEP 13 A 10: 29  
*[Handwritten signature]*

ICTR  
JUDICIAL RECORDS/ARCHIVES  
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Joseph KANYABASHI  
(Appellant)  
v.  
THE PROSECUTOR  
(Respondent)

Case No. ICTR-96-15-AR72

ICTR Appeals Chamber  
Date: 12/Sept/2000  
Action: Translation  
Copied To: All Judges, ALOs  
MD, KM, Judicial Archive,  
Defence Counsels, Detainees

**DECISION**  
(MOTION FOR REVIEW OR RECONSIDERATION)

Counsel for the Appellant:

Mr Michel MARCHAND  
Mr Michel BOYER

Counsel for the Prosecutor:

Mr Japhet D.MONO  
Mr Ibukunolu A. BABAJIDE  
Ms Andra MOBERLEY

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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 “*Appel relatif à une exception d’incompétence à l’encontre de la décision rendue par la Chambre de première instance II, le 5 octobre 1999 (Art. 72, 108(B) et 117 du Règlement de procédure et de preuve)*” (“the Notice of Appeal”), filed on 3 November 1999 by Joseph KANYABASHI (“the Appellant”) against a decision of Trial Chamber II dated 5 October 1999 (“the Impugned Decision”);

**NOTING** the “Decision (Appeal against Trial Chamber II’s Decision of 5 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** an “Appellant’s Motion Seeking the Review or Reconsideration of the Appeals Chamber’s Decision of 13 April 2000 Rejecting his Appeal” filed by the Appellant on 19 April 2000 (“the Motion”), in which the Appellant prays the Appeals Chamber to review or reconsider the Decision and to rule on the merits of the appeal;

**NOTING** the Scheduling Order issued by the Appeals Chamber on 9 June 2000;

**NOTING** the “Prosecutor’s Response to the Appellant’s Motion Seeking the Review or Reconsideration of the Appeals Chamber’s Decision of 13 April 2000 Rejecting his Appeal” filed by the Prosecutor on 14 June 2000 (“the Prosecutor’s Response”), and the “*Requête de l’Appelant au Président de la Chambre d’appel demandant la permission de répliquer à la procédure du procureur intitulée ‘Prosecutor’s response to the appellant’s motion seeking the review or reconsideration of the appeals chamber’s decision of 13 april 2000 rejecting his appeal’ (Art. 117, par B) Règlement de procédure et de preuve)*” filed by the Appellant on 19 June 2000;

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**NOTING** the assertion in the Motion that the Impugned Decision was not transmitted to the Appellant until 28 October 1999, and the annexed copy of the Impugned Decision faxed to the Appellant's counsel, which bears a transmission date of 28 October 1999;

**NOTING** that the Prosecutor's Response accepts that the Impugned Decision was transmitted to the Appellant on 28 October 1999;

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

**CONSIDERING** 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;

**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 was rendered on a motion for joinder filed by the Prosecutor under Rule 73;

**NOTING** that the Appellant alleged procedural flaws in the process leading to the Impugned Decision which violated the rights of the Defence, objections which the Appellant sought to characterise as objections based on lack of jurisdiction within the meaning Rule 72;

**CONSIDERING** that these objections were not based on lack of jurisdiction within the meaning 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.

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

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Claude Jorda  
Presiding

Dated this twelfth day of September 2000  
At The Hague.  
The Netherlands.

[Seal of the Tribunal]

