



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

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538/H  
RMM

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Lal Chand VOHRAH, Presiding  
Judge Rafael NIETO-NAVLA  
Judge Fausto POCAR  
Registrar: Mr Agwu U OKALI  
Decision of: 16 October 2000

ICTR-96-14-A  
16 Oct 2000  
(538/H-533/H)

Eliézer NIYITEGEKA

v.

THE PROSECUTOR

Case No.: ICTR-96-14-A

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DECISION DISMISSING INTERLOCUTORY APPEAL AGAINST  
TRIAL CHAMBER II'S DECISIONS OF  
21 AND 23 JUNE 2000

Counsel for Eliézer NIYITEGEKA  
Ms Sylvia GERAGHTY

Counsel for the Prosecutor  
Mr Ken FLEMMING  
Mr Don WEBSTER  
Ms Ifeoma OJEMENI  
Ms Melinda POLLARD

ICTR Appeals Chamber  
Date: 16/10/2000  
Action:  
Copied To: All Judges, Parties

ACUS, Judicial Archives  
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**THIS BENCH OF 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 1994 and 31 December 1994 ("the Bench" or "the Tribunal" respectively);

**BEING SEISED** of the "Notice of Appeal [ARTICLE 24 and RULE 72(D)]", filed by the accused Eliézer Niyitgeka ("the Appellant") on 27 June 2000 ("the Notice of Appeal") against i) the "Decision on Prosecutor's Request for Leave to File an Amended Indictment", issued by Trial Chamber II on 21 June 2000, ("the First Impugned Decision"), and ii) the "Decision to Extend the Deadline for the Submission of the Amended Indictment", issued by Trial Chamber II on 23 June 2000, ("the Second Impugned Decision");

**NOTING** that the Trial Chamber in the First Impugned Decision i) granted the Prosecutor leave to amend the indictment against the Appellant by adding four new charges against him; ii) ordered, *inter alia*, the Prosecutor to file in French and English an amended indictment reflecting the amendments granted by 23 June 2000, at 9 hours; and iii) further ordered the Registry to serve the amended indictment, in French and in English, immediately upon the Appellant;

**NOTING** that the Trial Chamber in the Second Impugned Decision, acting *proprio motu* in the interests of justice, i) extended the time-limit for the Prosecutor to file an amended indictment to 26 June 2000, at 9.30 hours; ii) directed the Registry to re-schedule the initial appearance of the Appellant in order to give him sufficient time to review the amended indictment so as to be sufficiently informed of the new charges brought against him; and iii) ordered the Registry to serve upon the Appellant the amended indictment immediately after receipt;

**NOTING** that the Notice of Appeal sets forth as preliminary grounds in respect of the First Impugned Decision that the Trial Chamber erred

- i) in failing to grant the Appellant adequate time to prepare his defence and to communicate with Counsel;

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- ii) in failing to order the withdrawal of Counts 9 and 10 of the proposed amended indictment, the Appellant having already pleaded to the alleged crimes set out in those Counts;
- iii) in allowing the amendment of the existing indictment even though that indictment was *void ab initio* and could not constitute the basis for an amendment of an indictment or to secure a joint trial;
- iv) in dismissing the Appellants application for a stay of proceedings pending the determination of a challenge to the existing indictment on the basis that it lacked personal, temporal and subject-matter jurisdiction;
- v) by admitting into evidence, and placing reliance thereupon, a document which was based on a "private" memorandum;
- vi) in failing to review certain materials and documentary evidence contained in Attachment B, so as to ensure that there was a *prima facie* case against the Appellant for each of the new charges in the proposed amended indictment, or
- vii) alternatively, in failing to order an *inter partes* hearing on the sufficiency of the new supporting material, in compliance with the principle of *audi alteram partem*;

**NOTING** that the Notice of Appeal sets forth as a preliminary ground of appeal in respect of the Second Impugned Decision that the Trial Chamber erred by failing to give the Appellant an opportunity to be heard, contrary to the principle of *audi alteram partem*;

**NOTING** the "Prosecutor's Response to the Accused Niyitegeka's Appeals of 2 June 2000 and 27 June 2000" ("the Prosecutor's Response"), with attached Annexes A to H consisting of various documents which pursuant to Rule 117(A) already forms part of the record on appeal, filed on 14 September 2000, in which the Prosecutor requests the Bench to dismiss the appeal;

**NOTING**, however, that the Appellant "[r]eserves the right to raise such further Grounds [of appeal] as may be warranted and to submit a full Brief, on delivery of the Decisions in French"<sup>1</sup>

**NOTING** that Rule 108(B) of the Rules and Procedure and Evidence ("the Rules") provides that in an appeal against an interlocutory decision dismissing an objection based on lack of

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<sup>1</sup> Notice of Appeal, p. 2 (emphasis original).

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jurisdiction, the seven-day time-limit for the filing of the notice of appeal runs from the date on which the full decision is delivered in either French or English, whichever comes first, but where the ability of an accused to make full answer and defence depends on the availability of the decision in an official language other than that in which it was originally issued, that circumstance shall be taken into account as good cause under Rule 116 of the Rules;

**CONSIDERING** that the Appellant's Counsel has indicated to the Registry that English is one of her working languages; that she has made prior submissions in English; and that the details contained in the Notice of Appeal demonstrate sufficiently to the Bench that Counsel understood the First and Second Impugned Decisions to adequately explain it to the Appellant and to take instructions from him, thereby enabling the Appellant to make full answer and file his Notice of Appeal;

**CONSIDERING**, further, that Rule 117(A) of the Rules provides that appeals against interlocutory decisions shall be determined expeditiously and on the basis of the original record of the Trial Chamber and without the necessity of any briefs;

**CONSIDERING** that the Appellant has not put forward any further reasons as to why he should be allowed to amend his grounds of appeal, or to submit a brief, and that the Bench is, therefore, not satisfied that a case for relaxing the principle as set out in Rule 117(A) of the Rules has been made out;

**CONSIDERING** that in these circumstances the Bench will confine itself to the issues raised in the Notice of Appeal and the Prosecutor's Response;

**NOTING** that Rule 72 of the Rules provides for preliminary motions to be brought by either party within thirty days following disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66(A)(i) and that decisions on such motions are without interlocutory appeal, save in case of a dismissal of an objection based on lack of jurisdiction where an appeal lies as of right;

**NOTING** that Rule 72(H) of the Rules provides that the phrase "objection based on lack of jurisdiction" refers exclusively to a motion which challenges an indictment on the ground that it does not relate to the personal, subject-matter, temporal or territorial jurisdiction of the

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Tribunal and that such objections are, therefore, directed to the substantial basis on which jurisdiction is exercised;

**NOTING** that under Rule 72(I) of the Rules an appeal brought under Rule 72(D) of the Rules may only be proceeded with if a bench of three Judges of the Appeals Chamber decides that the appeal is capable of satisfying the requirements of Rule 72(H) of the Rules aforesaid and that, therefore, the impugned decision dismissed an objection based on lack of jurisdiction as defined;

**NOTING** that, pursuant to Rule 50 of the Rules, an accused shall have a further appearance in respect of an amended indictment which includes new charges and that the same Rule provides that an accused shall also have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 of the Rules in respect of the new charges;

**CONSIDERING** that it is, therefore, clear that, as envisaged by the Rules, an amended indictment may only be challenged by way of a preliminary motion *after* the holding of a further appearance, which enables an accused to enter a plea on the new charges, and the disclosure of material in support of the indictment;

**CONSIDERING** that the First Impugned Decision is a decision upon the Prosecutor's Motion, in response to which the Appellant filed a motion setting out his objection to the granting of the Prosecutor's Motion<sup>2</sup>;

**CONSIDERING**, however, that the Appellant raised his objections to the granting of the Prosecutor's Motion prior to the holding of his further appearance in respect of the amended indictment and the disclosure of supporting material under Rule 66(A)(i) of the Rules;

**CONSIDERING** that, in consequence, these objections cannot form part of a preliminary motion within the meaning of Rule 72 of the Rules, such motion having to be brought within the specified time-period as set out in that provision;

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<sup>2</sup> Defence Motion Objecting to the Prosecutor's Request for Leave to File an Amended Indictment, on the grounds of, inter alia, Abuse of Process, Inadmissibility, Lack of Jurisdiction" ("the Defence Motion"), filed on 22 May 2000.

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CONSIDERING, further, that, in any event, the present appeal is not capable of satisfying the requirements provided for in Rule 72(H) of the Rules since the issues raised do not fall within the categories defined in that provision ;

CONSIDERING that the purpose of the Second Impugned Decision was i) merely to extend the time-limit for the filing of the amended indictment with three days; ii) to direct the Registry to re-schedule the Appellant's initial appearance on the amended indictment, in order to give him sufficient time to review it and to be sufficiently informed of the new charges brought against him; and iii) to order the Registry to serve the amended indictment upon the Appellant immediately after its filing;


CONSIDERING, further, that the Second Impugned Decision was taken by the Trial Chamber *proprio motu* in the interests of justice,<sup>3</sup>

CONSIDERING that the Rules do not grant a right of appeal in respect of such decision;

FINDING, therefore, that the Appellant has no right of appeal against the First and Second Impugned Decisions;

HEREBY DISMISSES the appeal.

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

  
Lal Chand Vohrah  
Presiding Judge

Dated this sixteenth day of October 2000  
At the Hague,  
The Netherlands

[Seal of the Tribunal]



<sup>3</sup> See the Second Impugned Decision, p. 2.  
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