



**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

4631H
Shf
8-12-2000

BEFORE A BENCH OF THE APPEALS CHAMBER

**Before: Judge Rafael NIETO-NAVIA, Presiding
Judge Lal Chand VOHRAH
Judge Fausto POCAR**

Registrar: Mr. Agwu U OKALI

Decision of: 4 December 2000

ICTR Appeals Chamber
Date: 04/Dec/2000
Action:
Copied To: All Judges, Parties,
Judicial Archives, ALDs,
MD
[Signature]

ICTR-97-20-A
4 DECEMBER 2000
(4631H - 4581H)

Laurent SEMANZA

v.

THE PROSECUTOR

Case No.: ICTR-97-20-A

**DECISION DISMISSING INTERLOCUTORY APPEAL AGAINST
TRIAL CHAMBER III'S DECISION OF
11 SEPTEMBER 2000**

Counsel for Laurent SEMANZA

Mr. Charles A. TAKU
Mr. Sadikou Alao

Counsel for the Prosecutor

Mr. Ken FLEMMING

JUDICIAL RECORDS/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" and "the Tribunal" respectively);

BEING SEISED of the "Notice and Grounds of Appeal pursuant to Rule 72 and 73 to the Hon. Appeal [sic] Chambers [sic] against the Decision of Trial Chambers [sic] III Dated 11 September 2000 by Defence", filed by Counsel for the accused Laurent Semanza ("the Appellant") on 18 September 2000 ("the Notice of Appeal") against the "Decision on the Defence Motion for Dismissal of the Entire Proceedings due to the Persistent and Continuous Violations of the Rights of the Accused, Rules of Procedure and Evidence and the Statute of the Tribunal and Abuse of Process", issued by Trial Chamber III on 11 September 2000 ("the Impugned Decision");

NOTING that the Trial Chamber in the Impugned Decision i) denied a defence motion seeking an order declaring the proceedings null and void; ii) denied a prosecution motion seeking to have the above defence motion stricken out; iii) denied a supplementary defence motion requesting the Trial Chamber to nullify the entire proceedings and decline jurisdiction over the Appellant with prejudice to the Prosecutor; and vi) directed the Registrar not to award any costs, including fees, to Defence Counsel with respect to the above motions;

NOTING that the Notice of Appeal sets forth as grounds of appeal that the Trial Chamber erred

- i) in law by proceeding to dismiss the defence motion with sanctions without giving the parties the opportunity to be heard orally or on written briefs;
- ii) in holding that the time-limit for the filing of preliminary motions under Rule 72 of the Rules of Procedure and Evidence ("the Rules") had expired in January 2000 without giving reasons therefore;
- iii) in law in basing part of the Impugned Decision on extraneous facts which did not form part of the motion before them;
- iv) in law in holding that the filing of the second and third amended indictments were not amendments within the meaning of Rule 50 of the Rules;

v) in making a finding of frivolity without first ordering that an oral hearing should take place;

vi) in holding that Counsel for the defence, contrary to his representation, resurrected certain objections in one of his motions;

vii) in issuing the Impugned Decision since it "is unwarranted and unreasonable having regard to the evidence";¹

NOTING the "Prosecutor's Response to the 'Notice and Grounds of Appeal Pursuant to Rule 72 and 73 to the Hon. Appeals Chambers [sic] Against the Decision of Trial Chambers [sic] III Dated 11 September 2000 by Defence'", filed on 11 October 2000 ("the Prosecutor's Response"), in which the Prosecutor requests the Bench to dismiss the appeal on the ground that it fails to meet the requirements of Rule 72(H) of the Rules;

NOTING that the Appellant has not filed a reply to the Prosecutor's Response within the time-limit specified in the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal ("the Practice Direction");

NOTING the "Extremely Urgent Motion to Set Aside the Ruling of Trial Chamber III Dated 30/10/2000 and an Order Staying Proceedings in ICTR-97-20-T Pending the Execution of the Appeal [sic] Chamber Decision Dated 10 October 2000 Pursuant to Rule 72", filed by the Appellant on 2 November 2000 ("the Motion"), in which he requests "guidance on what conduct to adopt towards the proceedings on the 6th November 2000 in case [sic] our motion herein mentioned pending before your leadership [sic] is not disposed of on or before that date";²

NOTING that the Motion does not meet fundamental requirements relating to filings before the Appeals Chamber as laid down in the Practice Direction, in that neither the specific ruling, the relief sought, nor the specific provision of the Rules under which the ruling or relief is sought, are set out;

NOTING that the vagueness of the Motion rendered it inappropriate to rule upon it at the time of filing, that it relates to the Notice of Appeal and that, in any event, the issue raised in

¹ Notice of Appeal, Registry page 425.

² Extremely Urgent Motion, Registry page 457.

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the Motion must now be considered to have become moot since the request for "guidance" related to trial proceedings conducted on 6 November 2000;

NOTING that the Appellant may be understood to be stating in the Notice of Appeal that he intends to put forward further grounds of appeal upon receipt of the records of the proceedings;

CONSIDERING that under Rule 108(B) of the Rules a notice of appeal against a decision dismissing an objection based on lack of jurisdiction shall be filed within seven days from the date on which the full decision is delivered in either French or English, whichever comes first;

CONSIDERING that a party may apply under Rule 116 of the Rules to enlarge that time-limit upon good cause being shown;

CONSIDERING that in respect of an appeal brought under Rule 72 of the Rules a party wishing to amend his notice of appeal outside the time-limit set out above may only do so with leave from the Bench;

CONSIDERING that the Appellant has sought neither an extension of time under Rule 116 of the Rules nor leave from the Bench to amend 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 record on appeal in an expedited appeals procedure consists of the record of the Trial Chamber in the particular phase of proceedings that resulted in the Impugned Decision;

CONSIDERING that such material must already be available to the Appellant;

CONSIDERING that the Appellant has not put forward any further reasons as to why he should be allowed to amend his grounds of appeal and that the Bench is, therefore, not

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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 as responded to in the Prosecutor's Response;

NOTING that the Notice of Appeal would appear to be filed under both Rules 72 and 73 of the Rules;

NOTING, however, that the Rules do not provide for a right of interlocutory appeal against decisions rendered under Rule 73 of the Rules;

NOTING that Rule 72 of the Rules provides that decisions on preliminary 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 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;

CONSIDERING that the issues raised by the Appellant in the Notice of Appeal do not relate to the personal, subject-matter, temporal or territorial jurisdiction of the Tribunal and are, accordingly, not directed to the substantial basis on which jurisdiction is exercised;

FINDING, therefore, that the present appeal is not capable of satisfying the requirements provided for in Rule 72(H) of the Rules;

HEREBY DISMISSES the appeal.

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



Rafael Nicto-Navia
Presiding Judge

Dated this fourth day of December 2000
At the Hague,
The Netherlands

[Seal of the Tribunal]