



**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 SHAHABUDDEEN
Judge Rafael NIETO-NAVIA
Judge Fausto POCAR

Registrar: Mr. Agwu U. OKALI

Order of: 12 December 2000

Juvenal KAJELIJELI
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case no. ICTR-98-44-AR72

ORDER

(ON MOTION TO GRANT RELIEF FROM DISMISSAL OF APPEAL)

Counsel for the Appellant

Mr. Lennox S. HINDS

Counsel for the Prosecution

Mr. Ken FLEMING
Mr. Don WEBSTER
Ms. Ifeoma OJEMENI
Ms. Melinda POLLARD

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 Appeals Chamber”);

NOTING the Notice of Appeal filed on 12 May 2000 (“the Notice of Appeal”) by Juvenal KAJELIJELI (“the Appellant”) against the 8 May 2000 Decision by Trial Chamber II;

NOTING the Scheduling Order issued by the Appeals Chamber on 26 July 2000 (“the Scheduling Order”), in which the Appeals Chamber observed that the Notice of Appeal neither mentioned any ground of appeal nor gave any indication of the relief sought, and in which the Chamber ordered the Appellant to file a document supplying the necessary additional information within seven days, failing which his appeal would be dismissed;

NOTING that no such document has been filed;

NOTING the Order issued by the Appeals Chamber on 10 August 2000 and filed with the Registry on 11 August 2000 (“the Order”) which dismissed the appeal accordingly;

NOTING the “Notice of Urgent Motion to Grant Relief from Dismissal of Appeal” filed by the Appellant on 14 August 2000 (“the Motion”), in which he asks the Appeals Chamber to vacate the Order on the grounds, *inter alia*, that his counsel had not received copy of the Scheduling Order;

NOTING the “Prosecutor's Response to Appellant's Motion for Relief against Dismissal of Appeal” filed on 20 September 2000 and the “Appellant’s Reply in Further Support of his Motion for Relief against Dismissal of Appeal” filed on 5 October 2000;

NOTING the annexed fax transmission sheet showing that the Scheduling Order was transmitted to counsel for the Appellant on 31 July 2000;

NOTING the Scheduling Order issued on 28 November 2000 by the Appeals Chamber asking the parties to respond to the issue of whether the Scheduling Order was or was not received in the office of counsel for the Appellant;

NOTING the “Certification Regarding Receipt of July 26, 2000 Order” filed on 5 December 2000, in which counsel for the Appellant states that he was absent from his office between 3 July and 8 August 2000 and that his Office Manager certifies by sworn affidavit that the fax of the Scheduling Order was not received, and moreover that the receiving fax number shown on the transmission sheet is unclear;

NOTING the “Response of the Prosecutor to Scheduling Order” filed on 5 December 2000 in which the Prosecutor states that the argument of counsel for the Appellant, suggesting that the receiving fax number is unclear, is implausible, that the sheet shows the name “HINDS L” as being that of the person to whom the Order in question was successfully transmitted and that there is therefore cause to dismiss the appeal;

CONSIDERING that the receiving fax number shown on the transmission sheet is reasonably clear and legible, contrary to the allegation by counsel for the Appellant, and that that number is the one shown on the documents produced in these proceedings by counsel for the Appellant;

CONSIDERING ALSO that the argument that the receiving fax number shown on the transmission sheet is unclear falls before the fact that the document was transmitted to HINDS L, counsel for the Appellant, as shown elsewhere on the same transmission sheet;

CONSIDERING that service by fax of decisions and other trial documents is accepted and that the notations on the transmission sheet are the sole available evidence of completion of such service and are authoritative until proven otherwise, and that in the instant case no such proof to the contrary has been satisfactorily shown;

FOR THESE REASONS

DISMISSES the Motion.

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

[signed]

Claude Jorda,
Presiding

Done at The Hague (Netherlands), 12 December 2000

[Seal of the Tribunal]