

UNITED NATIONS
NATIONS UNIESTribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

1597/H

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14-12-00**BEFORE A BENCH OF THE APPEALS CHAMBER****Before:**Judge Fausto POCAR, Presiding
Judge Lal Chand VOHRAH
Judge Rafael NIETO-NAVIA

ICTR-97-19-AR72

14 DECEMBER 2000

(1597/H - 1594/H)

Registrar:

Mr. Agwu U. OKALI

Decision of:

13 December 2000

Jean-Bosco BARAYAGWIZA
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case no. ICTR-97-19-AR72

ICTR Appeals Chamber

Date: 14/Dec/2000

Action:

Copied To: All Judges, Parties,
Judicial Archives, ALOs,
MD
R. H. H.**DECISION**

(INTERLOCUTORY APPEAL FILED ON 18 SEPTEMBER 2000)

Counsel for the AppellantMs. Carmelle MARCHESSAULT
Mr. Daniel DANIELSON**Counsel for the Prosecutor**Mr. William T. EGBE
Ms. Cydney CRICKARDJUDICIAL 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 neighboring States, between 1 January 1994 and 31 December ("the Bench" and "the Tribunal" respectively);

BEING SEIZED of the "Notice of Appeal" filed on 18 September 2000 by Jean-Bosco Barayagwiza ("the Appellant") against the oral ruling ("the Impugned Decision") by two judges of Trial Chamber I on 11 September 2000 dismissing the Appellant's request (as indicated by the applicant) for two judges of the Trial Chamber to recuse themselves;

CONSIDERING that the Appeals Chamber has accepted that the opposing party may file a response to a notice of appeal filed by an appellant and that if it chooses to do so, an appellant may then file a reply to the issues raised in such a response,¹

NOTING that no response has been filed by the Prosecution in this case;

NOTING the Transcript of the 11 September 2000 hearing, which shows that an oral ruling rejecting the Appellant's request was rendered by the two judges who were requested to recuse themselves, one of whom is the Presiding Judge in the case;

NOTING that it would have been perhaps advisable for the two judges concerned by the Appellant's request to confer with the third judge also, or to refer the issue to the Bureau;

NOTING that in his Notice of Appeal, which was timely filed, the Appellant states, *inter alia*, that the two judges concerned improperly viewed the scene of crimes allegedly committed by the Appellant, without prior notification to the Appellant and without his Counsel's attendance, but with Rwandan government representatives present, and that they improperly met with President Kagame and Prosecutor General Gahima to improve relations between the Tribunal and Rwanda, which were allegedly strained as a result of the 3 November 1999 Decision of the Appeals Chamber in *Barayagwiza*;

¹ Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal, 29 Sept. 2000. Although the Practice Direction does not apply to this appeal, it does reflect the general practice of the ICTR.

15951

NOTING further that the Notice of Appeal is based firstly on Article 24 of the Statute of the International Tribunal ("the Statute") and Rules 72 (D) and 108 of the Rules of Procedure and Evidence ("the Rules"), and secondly on the Appeals Chamber's inherent powers;

NOTING that Article 24 of the Statute concerns appeals from persons convicted by the Trial Chambers or from the Prosecutor—that is, post-judgment appeals—and therefore does not apply to the present appeal;

NOTING that Rule 108 of the Rules is relevant only as far as it governs the time limits for the filing of Notices of Appeal;

CONSIDERING that inherent powers do not provide jurisdiction to hear an interlocutory appeal, this being governed by Rule 72(D) of the Rules;

CONSIDERING that Rule 72(D) provides that decisions on preliminary motions are without interlocutory appeal, save in the case of dismissal of an objection based on lack of jurisdiction where an appeal lies as of right;

CONSIDERING that Rule 72(H) of the Rules defines an "objection based on lack of jurisdiction" as referring to a motion challenging an indictment on the ground that it does not relate specifically 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;

CONSIDERING 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) aforesaid and that therefore the impugned decision dismissed an objection based on lack of jurisdiction as defined;

CONSIDERING that the issues raised by the Appellant in his request rejected by the Impugned Decision 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;

1594/H

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

CONSIDERING further that the Impugned Decision is a ruling by two judges which is without appeal under Rule 72 of the Rules;

FOR THESE REASONS

HEREBY DISMISSES the appeal.

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



Fausto Pocar
Presiding

Dated this 13th day of December 2000
At The Hague,
The Netherlands.

[Seal of the Tribunal]

