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

06-06-01  
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**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. Adama DIENG

**Decision of:** 5 April 2001

ICTR Appeals Chamber  
Date: 5/APRIL/2001  
Action: PG  
Copied To: AU Judges, Parties,

ACOs, Judicial Archives  
(original) MAJK

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**Georges Anderson Nderubumwe RUTAGANDA**  
(Appellant)

v.

**THE PROSECUTOR**  
(Cross-Appellant)

Case No. ICTR-96-3-A

ICTR.96-3-A  
5 APRIL 2001  
(974/H<sub>bis</sub> - 969/H<sub>bis</sub>)

**DECISION**  
**(ON MOTION TO AMEND THE APPELLANT'S NOTICE OF APPEAL)**

**Counsel for the Appellant**

Mr. David JACOBS

**Counsel for the Prosecution**

Mr. Solomon LOH

JUDICIAL RECORDS/ARCHIVES  
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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 1994 and 31 December 1994 ("the Appeals Chamber");

**NOTING** the Judgement and Sentence of 6 December 1999 ("the Judgement") by Trial Chamber I finding Georges Anderson Nderubumwe RUTAGANDA ("the Appellant") guilty of genocide and crimes against humanity and sentencing him to a single sentence of life imprisonment;

**NOTING** the Notices of Appeal against the Judgement which were filed with the Registry on 5 January 2000 by Georges Rutaganda (the "Notice of Appeal") and on 6 January 2000 by the Prosecutor;

**NOTING** the "Motion to Amend the Appellant's Notice of Appeal" filed on 23 November 2000 ("the Motion") in which the Appellant seeks leave to amend his Notice of Appeal by adding the following grounds:

- (1) The conviction should be quashed and a new trial ordered because the Appellant was denied a fair trial and the right of full answer and defence by reason of very serious judicial misconduct as follows:
  - (a) The Trial Chamber had before it and failed to disclose to the Appellant material evidence, consisting of Documents 233 and 234 of Volume IV of the Trial Record, which the Appellant was not aware of;
  - (b) The Trial Chamber had before it and relied upon inadmissible evidence included in Document 42 of Volume I and Documents 233 and 234 of Volume IV of the Trial Record;
  - (c) The Trial Chamber had before it and relied upon material evidence, included in Document 42 of Volume I of the Trial Record and Documents 233 and 234 of Volume IV of the Trial Record, which had not been admitted into evidence and was therefore inadmissible, and was not disclosed to the Appellant;
  - (d) The Trial Chamber failed to recuse itself from the case and/or declare a mistrial on receipt of the aforesaid inadmissible and undisclosed material evidence;
  - (c) The Trial Chamber was biased as a result of its receipt of and reliance on that inadmissible and undisclosed evidence;

- (f) The Trial Chamber failed to disclose to the Appellant and cause to be investigated evidence of judicial misconduct in correspondence before it (and not disclosed to the Appellant) setting out prosecutorial misconduct in inducing a witness to testify against the Appellant by promises of material gain to the witness;
- (2) The conviction should be quashed and a new trial ordered because the Appellant was denied a fair trial and the right of full answer and defence by reason of the Prosecutor's failure to disclose to the Appellant incriminating evidence in Documents 233 and 234 of Volume IV of the Trial Record which further suggests prosecutorial misconduct;
- (3) Such other grounds as may be advised;

**NOTING** that the Appellant requests that the Appeals Chamber schedule an oral hearing for arguments on the merits of the Motion;

**NOTING** that the Appellant emphasizes that despite all due diligence he could not have raised those grounds within the time limits set by Rule 108 (A) of the Rules of Procedure and Evidence ("the Rules") since the evidence was found after his Notice of Appeal had been filed and only after receipt and extensive review of the Trial Record; that those items of evidence and documents constitute new facts unknown to him whereas they were known to the Trial Chamber and the Prosecution; that paragraph 139 of the Judgement<sup>1</sup> demonstrates that the Trial Chamber did consider the witness statements contained in Document 42, which was part of the Trial Record; and that the Chamber should have recused itself on receiving Documents 233 and 234;

**NOTING** the "Prosecution Response to the Appellant's Motion to Amend his Notice of Appeal", filed on 1 December 2000 ("the Prosecution Response"), in which the Prosecution argues generally that the Appellant, unable to invoke Rule 108 of the Rules, has failed to show that he exercised due diligence in raising the proposed new grounds of appeal or that the proposed new grounds of Appeal arguably could invalidate the Judgement, and submits that the Motion should accordingly be dismissed;

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<sup>1</sup> "In her closing argument, Defence Counsel stated that a notice of alibi had been filed. The Chamber notes that no record of a notice of alibi was filed at any time, and that there is no record of such a notice in the judicial archives or within the judicial record. [...]"

**NOTING** that the Prosecution submits *inter alia*:

- (1) That Document 42, containing the Prosecution's disclosure of potential Prosecution witnesses to the Appellant, was filed with the Registry on 7 January 1997 and the Prosecution case had been disclosed to counsel for the Appellant through the DHL courier service on 12 December 1996; that, moreover, on 28 July 2000 and 7 September 2000 respectively, the Appellant received from the Registry the indexes to the certified Trial Record and the certified Trial Record itself; that Documents 42 and 233/234 were indicated in the indexes and contained in the certified Trial Record; and that the Appellant and his counsel, who were in a position to discover the existence of those documents, therefore had 60 days to indicate which documents they wanted included in the Record on Appeal;
- (2) That the Appellant fails to show that the Trial Chamber relied in its Judgement on the unadmitted witness statements in Document 42 or on Documents 233 and 234; also, that those Documents were not in the file of exhibits but simply in the case file; that the author of Document 233/234 had never testified in the Appellant's case; that it might be assumed that the Trial Chamber Judges who received those documents, which had never been introduced as exhibits or evidence, did not take them into account in weighing the evidence; and that paragraph 139 of the Judgement was irrelevant to the documents in question;

**NOTING** the "Appellant's Reply", filed on 4 December 2000 ("the Reply"), in which the Appellant submits *inter alia* that:

- (1) He agrees with what he classifies as a concession by the Prosecution in the Prosecution Response that the issue, of the actual or perceived bias of the Trial Chamber arising from the fact that Documents 42, 233 and 234 (which were not properly adduced into evidence) were before it without the knowledge of the Defence, is already before the Appeals Chamber in the Notice of Appeal;
- (2) Disclosure to him of the statements in Document 42 in December 1996 was not notice that they would subsequently be filed with the Registry in January 1997 and included in the Trial Record for perusal by the Trial Chamber, he did not know that the statements in Document 42 were before the Trial Chamber, and he could therefore not make representations as to either their admissibility or the weight which should be given to them;
- (3) The receipt of inadmissible material evidence without notice to the parties gave rise to the fatal appearance of bias;

- (4) The allegation that the Trial Chamber and the Prosecution failed to disclose that an inducement was offered to a potential witness is not included in the Prosecution concession;
- (5) The Prosecution agrees that the information concerning prosecutorial misconduct was in the indexes to the Trial Record and the certified Trial Record, and that as they were only transmitted on 28 July and 7 September 2000 respectively the Appellant could not include this allegation in the Notice of Appeal;
- (6) As Documents 233 and 234 were never transmitted to the Appellant, the Prosecution makes no suggestion that he could have known they existed prior to receipt of the Trial Record;
- (7) As he has demonstrated good cause for failing to include the issue of prosecutorial misconduct in the Notice of Appeal, the Prosecution has failed to demonstrate any prejudice and it is contrary to the interests of justice to prevent the Appellant from amending the Notice of Appeal;

**CONSIDERING** that the Appeals Chamber sees no need to schedule an oral hearing for arguments on the Motion as the written filings suffice to enable it to reach a decision on whether to grant leave to amend the Notice of Appeal;

**CONSIDERING** that Document 42 comprises 33 witness statements which the Prosecution filed with the Registry on 7 January 1997, as shown in the Document, and that the parties admit that only 12 witness statements were introduced into evidence before the Chamber;

**CONSIDERING** that Documents 233 and 234 consist of a handwritten letter from a witness to a Prosecution investigator with a photocopy of the witness's identity card, and a translation into English of that letter; that this correspondence was copied to the Trial Chamber; that in the letter the witness reminds the investigator of his promise to obtain a computer to help the investigator in his inquiries; and that the parties do not dispute that this letter was not introduced in evidence and that its author was not heard as a witness in the Appellant's case;

**CONSIDERING** that the parties do not dispute that the indexes of the Trial Record and the Trial Record itself were served upon them in July 2000 and September 2000 respectively;

**CONSIDERING** that under Rule 108 of the Rules, written notice of appeal setting forth the grounds of appeal must be filed with the Registrar and served upon the other party not more than 30 days from the date on which the full judgement and sentence are delivered in both English and French;

**RECALLING** that the Appeals Chamber may grant a party leave to amend its notice of appeal outside the time limits set by Rule 108 of the Rules, but that in so exercising its discretionary powers it must determine whether the moving party has shown good cause, whether granting such leave would cause material prejudice to the opposing party, and whether it would otherwise be contrary to the interests of justice for leave to be granted;

**CONSIDERING** that the Prosecution has conceded that the allegation of alleged bias in the Motion is already covered by the Notice of Appeal;

**CONSIDERING** that the Appellant is free to develop this issue within his Appellant's Brief as filed pursuant to Rule 111 of the Rules but only insofar as it is directly related to the ground of appeal already included in his Notice of Appeal and not necessarily as summarized broadly by the Appellant in the Motion and the Reply;

**CONSIDERING** that the Appellant was in possession of the witness statements listed in Document 42; that their consideration by the Trial Chamber was known to the Appellant when he filed his Notice of Appeal; and that the presence of Document 42 in the certified Trial Record is neither a new nor an exceptional fact;

**CONSIDERING** also that the presence of Documents 233 and 234 in the certified Trial Record is neither new nor an exceptional fact, although they were not used as exhibits or as evidence in the proceedings, and that the author did not testify in the Appellant's case;

**CONSIDERING THEREFORE** that the Appellant has failed to show that there is good cause to amend the time limits prescribed by Rule 108 of the Rules or that it is in the interests of justice that leave be granted to amend the Notice of Appeal;

**FOR THESE REASONS**

**DISMISSES** the Motion.

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

[signed]

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Claude Jorda,  
Presiding

Dated this fifth day of April 2001  
At The Hague, The Netherlands

[Seal of the Tribunal]

