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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

BEFORE A BENCH OF THE APPEALS CHAMBER

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

Registrar: Mr. Adama DIENG

Decision of: 11 June 2001

André RWAMAKUBA
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-98-44-A

ICTR Appeals Chamber
Date: 11 June 2001
Action: PG
Copied To: All Judges, Parties,

ALOs, Judicial Archives Originals
MD
[Signature]

ICTR-98-44-A
11 JUNE 2001
(294/H - 290/H)

DECISION
(APPEAL AGAINST DISMISSAL OF MOTION CONCERNING ILLEGAL ARREST AND DETENTION)

Counsel for the Appellant

Mr. David HOOPER

Counsels for the Prosecution

Mr. Don WEBSTER
Mr. Jayantha JAYASURIYA

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BEFORE A 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 SEIZED OF the “Notice of Appeal Against the Decision of Trial Chamber II Concerning the Illegal Arrest and Detention of the Accused” filed on 19 December 2000 (“the Notice of Appeal”) by the Accused André RWAMAKUBA (“the Appellant”) against the “Decision on the Defence Motion Concerning the Illegal Arrest and Illegal Detention of the Accused” issued on 12 December 2000 (“the Impugned Decision”);

NOTING that the Impugned Decision dismissed the “Defence Motion Concerning the Arrest and Illegal Detention of the Accused and Seeking Unconditional Release” filed on 18 April 2000 (“the Motion”);

NOTING that the Trial Chamber initially considered the admissibility of the Motion and found that:

- (1) the Motion was filed on 18 April 2000, after the entry into force of “Rule 72(G)”¹ of the Rules of Procedure and Evidence (“the Rules”) which “was added to the effect of restricting any objections based on lack of jurisdiction under Rule 72(B)(i) of the Rules to *motion[s] challenging an indictment (...)*”;
- (2) as the issues raised in the Motion were not related to the indictment against him, the Motion would not be reviewed under Rule 72 of the Rules but rather under Rule 73(A) of the Rules, as submitted in the alternative;

NOTING that the Trial Chamber then dismissed the Motion on the grounds that:

- (1) the Tribunal was not responsible for the Accused’s detention from 2 August 1995 to 22 December 1995 and from 22 December 1995 to 18 January 1996;
- (2) the delay in assigning counsel for the Accused attributable to the Registrar and the delay in his initial appearance did not cause him serious and irreparable prejudice;

¹ The Appeals Chamber assumes it that it was the intention of the Trial Chamber to refer to Rule 72(H), rather than Rule 72(G).

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- (3) there was no cumulation of violations of the rights of the Accused save for the failure of the Registrar to assign duty counsel to him;

NOTING that the Appellant argues in the Notice of Appeal that the Trial Chamber was wrong to dismiss the Motion for his immediate and unconditional release with regard to:

- (1) his arrest and detention in Namibia in 1995 and 1996;
- (2) the conditions of his first months of detention at the United Nations Detention Facility;
- (3) the overall cumulation of violations of his rights;

NOTING that the Appellant argues *inter alia* in his Notice of Appeal that the Tribunal erred in concluding that:

- (1) the Namibian authorities did not arrest and detain him at the request of the Tribunal;
- (2) the Prosecutor was not notified of the Accused's arrest prior to 21 December 1995;
- (3) the Appellant himself contributed to the four-and-a-half-month delay in the time between transfer and initial appearance;
- (4) the failure to provide duty counsel had not caused him serious and irreparable prejudice;
- (5) the cumulated violations of the Appellant's rights were not sufficiently serious;

NOTING that the Appellant also submits that his appeal is brought under Rule 72(D) of the Rules, that the Trial Chamber erred in considering the Motion only on the basis of Rule 73(A) of the Rules, and alternatively that the unamended Rule 72 of the Rules in force before February 2000 is the relevant Rule as the problems which arose and for which relief is sought took place before the amendment of the Rules;

NOTING the "Prosecutor's Response to the Accused's Notice of Appeal against the Decision of Trial Chamber II Concerning the Illegal Arrest and Detention of the Accused" filed on 9 January 2000 in which the Prosecution submits *inter alia* that:

- (1) Trial Chamber II did not err in considering the Motion and the Appellant's challenge to his arrest and detention in Namibia, and his indictment, solely under Rule 73 of the Rules;

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- (2) none of the issues raised by the Motion challenge the indictment on any of the grounds referred to in Rule 72(H) of the Rules;
- (3) the Tribunal has construed Rule 72(D) of the Rules to limit interlocutory appeals to dismissal of an objection based on lack of jurisdiction as set forth in Rule 72(B)(i) of the Rules and that on this basis the Impugned Decision is not subject to interlocutory appeal;

CONSIDERING that Rule 72(D) of the Rules 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 exclusively to a motion which challenges an indictment on the grounds that it does not relate to the personal, territorial or temporal jurisdiction of the Tribunal or to the violations indicated in its Statute;

CONSIDERING that under Rule 72(I) of the Rules an appeal brought under Rule 72(D) of the Rules may not be proceeded with if a bench of three Judges of the Appeals Chamber, assigned by the presiding Judge of the Appeals Chamber, decides that the appeal is not capable of satisfying the requirements of Rule 72(H) of the Rules and that therefore the Impugned Decision dismissed an objection based on lack of jurisdiction as defined;

CONSIDERING that the Appellant raised allegations concerning the legality of his arrest and detention in Namibia in the Motion and that he has also raised these issues before the Bench in the Appeal;

CONSIDERING that in the circumstances of this case, the Appellant did not specifically challenge the indictment and that the particular issues raised in the Appeal do not fall within the terms of Rule 72(H) of the Rules as defined;

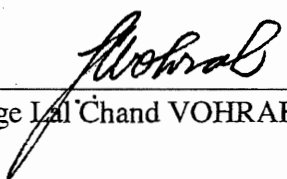
CONSIDERING that it is open to the Appellant to invoke the issue of the alleged violation of his fundamental human rights by the Tribunal in order to seek reparation as the case may be, at the appropriate time;

FOR THESE REASONS

DISMISSES the Appeal.

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


Judge Lal Chand VOHRAH

Dated this 11th day of June 2001
At The Hague, The Netherlands



[Seal of the Tribunal]