



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: 18 September 2001

ICTR-98-44A-T
18 SEPTEMBER 2001
(04/H - 01/H)

Juvénal KAJELIJELI
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-98-44A-T

ICTR Appeals Chamber
Date: 18/September/2001
Action:
Copied To: All Judges Pan

Judicial Archives (orig)
ALDs, JK
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DECISION

(APPEAL AGAINST THE DECISION OF 13 MARCH 2001 DISMISSING "DEFENCE MOTION OBJECTING TO THE JURISDICTION OF THE TRIBUNAL")

Counsels for the Appellant

Mr. Lennox S. HINDS
Mr. Sherrie L. RUSSELL-BROWN

Counsel for the Prosecution

Mr. Ken FLEMING QC

JUDICIAL RECORDS ARCHIVES
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THE BENCH OF THREE JUDGES 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”, filed on 16 March 2001 by Juvénal Kajelijeli (“the Appeal” and “the Appellant” respectively) against the “Decision on the Defence Motion Objecting to the Jurisdiction of the Tribunal”, rendered by Trial Chamber II on 13 March 2001 (“the Impugned Decision”), which dismissed the “Preliminary Motion Objecting to the Jurisdiction of the Tribunal Based Upon the Amended Indictment Dated January 25, 2001”, filed by the Appellant on 2 March 2001 (“the Preliminary Motion”);

CONSIDERING the “Response of the Prosecutor to the Notice of Appeal Filed by the Defence on 15th March 2001 Against the ‘Decision on the Defence Motion Objecting to the Jurisdiction of the Tribunal’ Delivered by the Trial Chamber II on the 13th March 2001”, filed by the Prosecutor on 9 May 2001 (“the Response”);

CONSIDERING the “Appellant’s Brief in Support of his Appeal of Trial Chamber II’s March 13, 2001 Decision Denying Appellant’s Challenge to the Tribunal’s Jurisdiction Based on His Arbitrary and Illegal Arrest and Detention”, filed by the Appellant on 15 June 2001 (“the Appellant’s Brief”);

NOTING that pursuant to paragraph 2 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal (“the Practice Direction”), which provides that “the opposite party or parties shall file a response within fourteen days of the filing of the interlocutory appeal”, the Response was filed out of time, and that there was no application for a variation of the deadline;

NOTING further that neither the Rules of Procedure and Evidence (“the Rules”) nor the Practice Direction provide for the filing of briefs in support of an interlocutory appeal, and that the Appellant has not applied for leave to file his Appellant’s Brief;

CONSIDERING that, for these reasons, the Bench will disregard the Response and the Appellant’s Brief in the instant case;

NOTING that in the Impugned Decision, Trial Chamber II found that the Preliminary Motion could not challenge the Amended Indictment of 25 January 2001 (“the Amended Indictment”) as a whole, but only, pursuant to Rule 50(C) of the Rules, in respect of the new charges contained therein;

NOTING that the Impugned Decision, moreover, dismissed the Preliminary Motion on the grounds that:

- (1) An Indictment may refer to events which occurred prior to 1994, as long as the Trial Chamber does not render verdicts on crimes allegedly committed by an accused prior to 1994;
- (2) The issues raised with regard to lack of personal jurisdiction are *res judicata* as they were decided upon by the Trial Chamber in its Decision of 8 May 2000;

NOTING that, in his first ground of appeal, the Appellant submits *inter alia* that:

- (1) The *res judicata* principle is not applicable at the Tribunal because it is not expressly provided for in the Statute of the Tribunal, and therefore, by applying the principle, the Trial Chamber failed to rule on the objection based on lack of personal jurisdiction raised by the Appellant;
- (2) The Constitutional Court of Benin found the arrest and detention of the Appellant to be null and void, hence his transfer to the Tribunal's Detention Facility was improper and the Tribunal has no personal jurisdiction over him;

NOTING that in his second ground of appeal, the Appellant submits *inter alia* that as the *stare decisis* principle is inapplicable at the Tribunal, the Trial Chamber should have considered the arguments advanced by him concerning temporal jurisdiction instead of determining the issue by relying on previous jurisprudence;

NOTING that in his third ground of appeal, the Appellant submits *inter alia* that the Trial Chamber erred in finding that the Preliminary Motion could not challenge the Amended Indictment as a whole but only in respect of the new charges, because the challenges to the lack of personal and temporal jurisdiction necessarily affect the whole Indictment;

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

CONSIDERING that Rule 72(H) of the Rules provides that an 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, territorial or temporal jurisdiction of the Tribunal, or to any of the violations defined under the Statute;

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CONSIDERING that Rule 72(I) of the Rules provides that an appeal brought under Rule 72(D) 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;

CONSIDERING that the second and third grounds of appeal relating to temporal jurisdiction and to the scope of the Preliminary Motion brought by the Appellant satisfy *prima facie* the requirements of Rule 72 (H) of the Rules;


CONSIDERING, moreover, that on 12 May 2000, the Appellant lodged an appeal against the Trial Chamber's Decision of 8 May 2000 dismissing his Motion on "Arbitrary Arrest and Illegal Detention" and that said appeal was ruled inadmissible by the Appeals Chamber in its Decisions of 10 August 2000 and 12 December 2000;

CONSIDERING that it is the duty of the Appeals Chamber to determine whether the first ground of appeal raises issues identical to those raised in the appeal of 12 May 2000 and whether the Appellant is, as a result, barred from raising *de novo* these issues through an interlocutory appeal;

FOR THE FOREGOING REASONS,

REFERS BY MAJORITY the Appeal to the Appeals Chamber.

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



Lal Chand Vohrah
Presiding

Done at The Hague, The Netherlands, 18 September 2001.

