



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

IN THE APPEALS CHAMBER

Before:

Judge Theodor Meron, President
Judge Mohamed Shahabuddeen
Judge David Hunt
Judge Mehmet Güney
Judge Fausto Pocar

Registrar: Mr. Adama Dieng

Date Filed: 31 July 2003

THE PROSECUTOR

v.

**ELIZAPHAN NTAKIRUTIMANA
AND GÉRARD NTAKIRUTIMANA**

Case No. ICTR-96-10-A and ICTR-96-17-A

PROSECUTION'S AMENDED NOTICE OF APPEAL

The Office of the Prosecutor:

Ms. Carla Del Ponte
Prosecutor

Counsel for the Respondents:

Mr. Ramsey Clark
Counsel for Elizaphan Ntakirutimana

Mr. David Jacobs
Counsel for Gérard Ntakirutimana

Pursuant to Article 24 of the Statute and Rule 108 of the Rules of Procedure and Evidence, the Prosecution hereby files a Notice of Appeal against the Judgement and Sentence of Trial Chamber I, pronounced on 19 February 2003 and rendered on 21

February 2003 in the case of *The Prosecutor v. Elizaphan and Gérard Ntakirutimana* (cases No ICTR-96-10-T and ICTR-96-17-T).

The Prosecution provides notice of the following grounds of appeal:

First Ground of Appeal (Genocide)

Gérard Ntakirutimana - Mugonero Indictment

The Trial Chamber erred in law at paragraphs 794 and 795 of the Judgement if it failed to base the conviction of Gérard Ntakirutimana for genocide on the acts as found by the Trial Chamber as to the participation of Gérard Ntakirutimana. If the Trial Chamber's Judgement at paragraph 794 is read as limiting the basis of liability for the conviction of genocide to the killing of Charles Ukobizaba, then the Trial Chamber erred in law.

This error invalidates the Judgement as Trial Chamber should have found Gérard Ntakirutimana liable for the crime of genocide on Count 1(A) of the Mugonero Indictment (ICTR-96-10-I) based on the overall participation of Gérard Ntakirutimana.

The Appeals Chamber should revise the verdict to reflect the expanded basis of liability of Gérard Ntakirutimana for the crime of genocide, in addition to the conviction for genocide for the killing of Charles Ukobizaba. The conviction of Gérard Ntakirutimana on count I(A) of the Mugonero Indictment (ICTR-96-10-I) should be for killings and causing serious bodily and mental harm to members of the Tutsi population who were attacked at Mugonero Complex, and the sentence increased accordingly.

Second Ground of Appeal (Genocide)

Gérard Ntakirutimana - Bisesero Indictment

The Trial Chamber erred in law at paragraphs 835 and 836 of the Judgement if it failed to base the conviction of Gérard Ntakirutimana for genocide on the acts as found by the Trial Chamber as to the participation of Gérard Ntakirutimana in Bisesero. If the Trial Chamber's Judgement at paragraph 835 is read as limiting the basis of liability for the conviction of genocide to the death of Esdras and the wife of Nzamwita and the harm caused to the Tutsi refugees, then the Trial Chamber erred in law.

This error invalidates the Judgement as Trial Chamber should have found Gérard Ntakirutimana liable for the crime of genocide on Count 1 of the Bisesero Indictment (ICTR-96-17-I) based on the overall participation of Gérard Ntakirutimana.

The Appeals Chamber should revise the verdict to reflect the expanded basis of liability of Gérard Ntakirutimana for the crime of genocide, in addition to that referred to in paragraph 835 of the Judgement. The conviction of Gérard Ntakirutimana on Count I of the Bisesero Indictment should be for killings and causing serious bodily and mental

harm to members of the Tutsi population who were attacked in the areas as found by the Trial Chamber, and the sentence increased accordingly.

Third Ground of Appeal (Genocide – Aiding and Abetting)

Elizaphan Ntakirutimana – Mugonero and Bisesero Indictments

The Trial Chamber erred in law in paragraph 787(iii) in finding that pursuant to Article 6(1), an aider and abettor has to have “the intent to destroy, in whole or in part, an ethnic or racial group, as such.”

Elizaphan Ntakirutimana was found by the Trial Chamber to have the requisite intent for genocide and on that basis, convicted for aiding and abetting genocide. The error invalidates the Judgement to the extent that Elizaphan Ntakirutimana should have been found guilty as a principal perpetrator of genocide, not on the basis of aiding and abetting.

The Appeals Chamber should revise the verdict to reflect the fact that Elizaphan Ntakirutimana is liable for genocide as a principal participant and not as an aider and abettor of genocide.

The Prosecution raises this ground of appeal, additionally, in that the determination of the mental element required under Article 6(1) for aiding and abetting genocide, is important to the development of the jurisprudence of the Tribunal.

Fourth Ground of Appeal (Crimes against humanity - Extermination)

Elizaphan Ntakirutimana and Gérard Ntakirutimana – Mugonero and Bisesero Indictments

First, the Trial Chamber erred in law at paragraph 813 and at paragraph 851 of the Judgement, in finding that one of the elements of crimes against humanity extermination under Article 3(b) of the Statute is that the victims be certain named or described persons. In the alternative, the Trial Chamber erred in law in paragraph 814 and in paragraph 852 of the Judgement in finding that the requirement that the victims of crimes against humanity extermination under Article 3(b) of the Statute be certain named or described persons was not met in the present case.

Second, the Trial Chamber erred in finding that the element of mass destruction had not been met, in the sense that Elizaphan Ntakirutimana and Gérard Ntakirutimana were not liable for the taking of a large number of lives. The Trial Chamber erred in law in paragraph 814 and in paragraph 852 of the Judgement in failing to consider that aiding and abetting in a large number of killings constitutes extermination.

These errors invalidate the Judgement as the Trial Chamber acquitted Elizaphan and Gérard Ntakirutimana on Count 4 of the Mugonero Indictment (ICTR-96-10-I) and Count 5 of the Bisesero Indictment (ICTR-97-17-I) of the crime of extermination.

The Appeals Chamber should reverse the verdict and enter a conviction for Elizaphan and Gérard Ntakirutimana on Count 4 of the Mugonero Indictment (ICTR-96-10-I) and Count 5 of the Bisesero Indictment (ICTR-96-17-I).

Fifth Ground of Appeal (Crimes against humanity – murder)

Elizaphan Ntakirutimana and Gérard Ntakirutimana – Mugonero Indictment and Bisesero Indictment

The Trial Chamber erred in law in its determination of the elements required for murder (crime against humanity) as applied to both the Mugonero Indictment (Count 3) and the Bisesero Indictment (Count 4).

Specifically, the Trial Chamber erred in paragraph 803 (Mugonero Indictment) in finding that one of the elements of crime of murder (crimes against humanity) is that the perpetrator personally killed the victim(s).

This same error was made by the Trial Chamber in relation to the Bisesero Indictment at paragraph 843 of the Judgement.

This error invalidates the Judgement as the Trial Chamber in paragraphs 805 and 844 did not find Elizaphan Ntakirutimana guilty of murder as a crime against humanity and did not find Gérard Ntakirutimana guilty of murder as a crime against humanity in paragraphs 810 and 849 for his participation in the many hundreds of killings at the Mugonero Complex and the many hundreds or thousands of killings in Bisesero.

The Appeals Chamber should reverse the verdict and enter convictions for Elizaphan Ntakirutimana on Count 3 of the Mugonero Indictment (ICTR-96-10-I) and Count 4 of the Bisesero Indictment (ICTR-96-17-T). Further, the Appeals Chamber should revise the verdict and enter convictions for Gérard Ntakirutimana on Count 3 of the Mugonero Indictment (ICTR-96-10-I) and Count 4 of the Bisesero Indictment (ICTR-96-17-T).

Sixth Ground of Appeal (Sentence)

Elizaphan Ntakirutimana and Gérard Ntakirutimana

The Trial Chamber erred in law in paragraphs 884 and 885 of the Judgement in not having due regard to the general sentencing practice of Rwanda as prescribed by Article 23 of the Statute and Rule 101 of the Rules.

The Trial Chamber erred in law in paragraph 921 of the Judgement in imposing a sentence on Elizaphan Ntakirutimana that in all the circumstances is manifestly

inadequate in the light of the gravity of the crimes committed by the Respondent and his degree of criminal culpability.

The Trial Chamber erred in law in paragraph 924 of the Judgement in imposing a sentence on Gérard Ntakirutimana that in all the circumstances is manifestly inadequate in the light of the gravity of the crimes committed by the Respondent and his degree of criminal culpability.

The Appeals Chamber should increase the sentence for Gérard Ntakirutimana to life imprisonment. The Appeals Chamber should increase the sentence for Elizaphan Ntakirutimana to 20 years of imprisonment.

Carla Del Ponte
Prosecutor

Done this 31st day of July 2003
The Hague, The Netherlands