



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

IN THE APPEALS CHAMBER

Before: Judge Mohamed SHAHABUDDEEN, Pre-Appeal Judge

Registrar: Mr. Adama DIENG

Decision of: 27 November 2003

Eliézer NIYITEGEKA
(Appellant)

V.

THE PROSECUTOR
(Respondent)

Case No. ICTR-96-14-A

**DECISION ON PROSECUTION'S URGENT MOTION CONCERNING
DEFECTS IN THE APPELLANTS'S NOTICE OF APPEAL**

Counsel for the Appellant

Ms. Sylvia Geraghty

Counsel for the Prosecutor

Ms. Mélanie Werrett

I, MOHAMED SHAHABUDDEEN, Judge 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 and 31 December 1994 ("International Tribunal"),

NOTING the “Judgement and Sentence” rendered in this case by Trial Chamber I on 16 May 2003;

NOTING that a “Notice of Appeal” was filed on 20 June 2003 (“First Notice of Appeal”) by Eliézer Niyitegeka (“Appellant”);

NOTING the “Decision on Prosecution Motion concerning Defects in the Appellant’s Notice of Appeal” rendered on 26 September 2003, which ordered “the Appellant to re-file his notice of appeal of no more than 15 pages, within 15 days of the filing of this decision, in accordance with the requirements of Rule 108 of the Rules [...] and Article 1 of the Practice Direction on formal requirements” (“Decision of 26 September 2003”);

NOTING the “Decision on Eliézer Niyitegeka’s Extremely Urgent Motion for an Extension of Time” rendered on 6 October 2003 which ordered the Appellant to file his Appellant’s brief no later than 17 November 2003;

NOTING that the notice of appeal was re-filed on 17 October 2003 (“Re-filed Notice of Appeal”) and comprises 19 pages of text and 2 pages of endnotes;

BEING SEISED OF the “Prosecution’s Extremely Urgent Motion concerning Defects in the Appellant Eliézer Niyitegeka’s Notice of appeal re-filed on 17 October 2003” filed on 7 November 2003 (“Prosecution’s Motion”), in which the Prosecution submits that the Appellant failed to respect the Decision of 26 September 2003 by filing a document of 21 pages which includes new grounds not contained in the First Notice of Appeal and requests that the Re-filed Notice of Appeal be struck off the record for non-compliance with the Decision of 26 September 2003;

NOTING the “Decision on defence motion for an extension of time and scheduling order” rendered on 17 November 2003 (“Decision of 17 November 2003”), which ordered that:

- 1) “the Appellant files a response to the objections contained in paragraph 5 and paragraph 7c)ii), d) and f) of the Prosecution’s Motion by Friday 21 November 2003;
- 2) the Prosecution files a reply, if it wishes to do so, by Tuesday 25 November 2003;
- 3) the Appellant files his Appellant’s brief no later than 5 days after the rendering of the decision by the Pre-Appeal Judge on the Prosecution’s Motion;”

NOTING the “Defense Repsonse (sic) to Appeals Chamber Decision of 17 November 2003 regarding Prosecution’s Extremely Urgent Motion Concerning Appellant Eliézer Niyitegeka’s Notice of Appeal Re-Filed on 17 October 2003” filed on 21 November 2003, in which the Appellant submits that the arguments raised by the Prosecution in the Prosecution’s Motion are without merit and seeks authorisation from the Pre-Appeal Judge to permit the Re-filed Notice of Appeal to stand as re-filed, as no prejudice is caused to the Prosecution (“Defence Response”);

NOTING the “Prosecution’s Reply to Defence Response to Appeals Chamber Decision of 17 November 2003 regarding Prosecution’s Extremely Urgent Motion Concerning Appellant Eliézer Niyitegeka’s Notice of Appeal Re-Filed on 17 October 2003” (“Prosecution’s Reply”) dated 25 November 2003 but filed confidentially on 27 November 2003, which is two days out of time according to paragraph 12 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal (“Practice Direction”) and the Decision of 17 November 2003;

NOTING that paragraph 16 of the Practice Direction provides that the Appeals Chamber “may vary any time-limit prescribed under this Practice Direction or recognise as validly done any act done after the expiration of a time-limit so prescribed”;

CONSIDERING that the delay in the late filing of the Prosecution’s Reply did not prejudice the proceedings in this appeal;

RECOGNISES the filing of the Prosecution’s Reply as validly done;

1) As to the length of the Re-filed Notice of Appeal;

CONSIDERING that the Decision of 26 September 2003 ordered the “Appellant to re-file his notice of appeal of no more than 15 pages” and that the Re-filed Notice of Appeal comprises 19 pages of text and 2 pages of endnotes, which is clearly oversized and in breach of the Decision of 26 September 2003;

NOTING that, in the Defence Response, the Appellant submits that “the limit of 15 pages proved too restrictive to safeguard the Appellants (sic) rights to a fair trial, pursuant to Article 19.1 and Article 20.2 of the ICTR Statute”;

NOTING that paragraph 5 of the Practice Direction on the Length of Briefs and Motions on Appeal filed on 16 September 2002, provides that a party “must seek authorisation in advance from the Appeals Chamber, a bench of three Judges of the Appeals Chamber or the Pre-Appeal Judge to exceed the page limits in the Practice Direction and must provide an explanation of the exceptional circumstances that necessitate the oversized filing”;

CONSIDERING however that, in the circumstances of this case and especially having in mind the length of the appeal proceedings in this case, it is necessary to recognise as validly filed the Re-filed Notice of Appeal;

2) As to the alleged new ground of appeal made in paragraph 9 of the Re-filed Notice of Appeal;

NOTING the Prosecution’s allegation that, contrary to paragraph 9 of the Re-filed Notice of Appeal, the First Notice of Appeal made no allegation concerning the “Prosecuting Counsel being a ‘professional lawyer[s] of good standing who [is] licensed and permitted to practice law”;

CONSIDERING that the substance of the alleged new ground was included in paragraphs 14, 15 and 16 of the First Notice of Appeal and **FINDING** therefore that the Prosecution's allegation concerning paragraph 9 of the Re-filed Notice of Appeal is without merit;

3) As to the alleged new ground of appeal made in paragraph 22 of the Re-filed Notice of Appeal;

NOTING the Prosecution's allegation that, contrary to paragraph 22 of the Re-filed Notice of Appeal, the First Notice of Appeal made no allegation that the Trial Chamber erred in finding that witness KJ and witness GGV were not accomplices;

CONSIDERING that, paragraph 41 of the First Notice of Appeal included a general allegation that the Trial Chamber "erred in law in failing to categorise Prosecution witnesses as accomplices and in doing so, failed to give themselves the necessary warnings with regard to the acceptance of their evidence and the weight that such evidence ought to be given";

CONSIDERING that, paragraph 22 of the Re-filed Notice of Appeal specifies with more clarity the allegation of the Appellant made in paragraph 41 of its First Notice of Appeal and in particular which Prosecution witnesses should have been, according to the Appellant, categorised as accomplices;

FINDING therefore that the Prosecution's allegation concerning paragraph 22 of the Re-filed Notice of Appeal is without merit;

4) As to the alleged new ground of appeal made in paragraph 42 of the Re-filed Notice of Appeal;

NOTING the Prosecution's allegation that paragraph 42 of the Re-filed Notice of Appeal was not included in the First Notice of Appeal;

CONSIDERING that the allegation by the Appellant that the Trial Chamber erred in deciding that witness KJ was a credible witness was made in paragraph 127 of the First Notice of Appeal and that the allegation that the Trial Chamber erred in deciding that witness KJ correctly identified the Appellant was made in paragraph 126 of the First Notice of Appeal, paragraph 42 of the Re-filed Notice of Appeal being intended to clarify that the identification of the Appellant by witness KJ relates to his presence at Kibuyeveville on 28 June 1994;

FINDING therefore that the Prosecution's allegation concerning paragraph 42 of the Re-filed Notice of Appeal is without merit;

5) As to the alleged new ground of appeal made in paragraph 45 of the Re-filed Notice of Appeal;

NOTING the Prosecution's allegation that paragraph 45 of the Re-filed Notice of Appeal was not pleaded in the First Notice of Appeal;

CONSIDERING that the allegation by the Appellant that the Trial Chamber erred in law and in fact in deciding that witness GGH was a credible witness was already included in paragraph 185 of the First Notice of Appeal;

NOTING that, in the Defence Response, the Appellant submits that the allegation that the Trial Chamber erred in deciding that he had not mistakenly identified the Appellant as being present at Gisovu on 10 April 1994 and at Bisesero on 13 April 1994, was included in paragraph 186 of the First Notice of Appeal and is "inherent in the Trial Chamber's credibility finding of GGH" and "its assessment of GGH's testimony regarding his observation of the Appellant on those occasions";

CONSIDERING that paragraph 45 of the Re-filed Notice of Appeal gives more precision as to the consequences of the alleged lack of credibility of witness GGH and does not therefore amount to a new ground of appeal;

FINDING therefore that the Prosecution's allegations concerning paragraph 45 of the Re-filed Notice of Appeal is without merit;

6) As to the alleged new ground of appeal made in paragraph 44 of the Re-filed Notice of Appeal;

NOTING the Prosecution's allegation that paragraph 44 of the Re-filed Notice of Appeal contains a new allegation, not included in the First Notice of Appeal, that the Trial Chamber erred in deciding that witness DAF had not mistakenly identified the Appellant as being present at Kucyapa, Bisesero on 13 May 1994;

NOTING that, in the Defence Response, the Appellant submits that this allegation can be found "in paragraph 96 and 239 of the Appellant's original Notice of Appeal" and that paragraph 139 of the Trial Judgement notes that witness DAF testified that the Appellant was at Muyira Hill on May 13 and that he saw the Appellant at Kucyapa on that date;

CONSIDERING that, contrary to the allegations of the Appellant, paragraphs 96 and 239 of the First Notice of Appeal do not refer to the allegation made in paragraph 44 of the Re-filed Notice of Appeal and that, even if witness DAF mentioned during his testimony that the Appellant was present in Kucyapa, the Appellant did not challenge that part of the finding in his First Notice of Appeal;

FINDING that the allegation made in paragraph 44 of the Re-filed Notice of Appeal was not included in the First Notice of Appeal and should therefore be struck off;

7) As to the alleged new ground of appeal made in paragraph 48 of the Re-filed Notice of Appeal;

NOTING the Prosecution's allegation that, contrary to paragraph 48 of the Re-filed Notice of Appeal, the First Notice of Appeal made no allegation that the "Trial Chamber erred in law in failing to exercise a sufficient degree of caution when considering the evidence of prosecution witnesses";

CONSIDERING that the matter contained in paragraph 48 of the Re-filed Notice of Appeal is reasonably arguable under paragraph 105 of the First Notice of Appeal and **FINDING** therefore that the Prosecution's allegation concerning paragraph 48 of the Re-filed Notice of Appeal is without merit;

8) As to the alleged new ground of appeal made in paragraph 52 of the Re-filed Notice of Appeal;

NOTING the Prosecution's allegation that, contrary to paragraph 52 of the Re-filed Notice of Appeal, the First Notice of Appeal did not contain the allegation that the "Trial Chamber erred in permitting the Prosecutor to adduce highly prejudicial evidence from Witnesses GGR and DAF in circumstances where the Defence had little or no notice of the acts alleged and where it made strenuous objection and where as a consequence of the trial chamber hearing such evidence from a Witness that they deemed to be credible, the Appellant reasonably apprehended bias on the part of the Judges trying his case";

NOTING that, in relation to witness DAF, the Appellant submits, in the Defence Response, that paragraphs 53, 55, 81 and 197 of the First Notice of Appeal gave sufficient notice to the Prosecution that the testimony of witness DAF was also included;

CONSIDERING that, as far as witness GGR is concerned, paragraph 196 of the First Notice of Appeal stated that the Appellant challenged "the ruling that the Defence had sufficient prior notice of the evidence of witnesses GGY and GGR in relation to an attack on the 13th May 1994" and that paragraph 197 of the First Notice of Appeal stated that the Appellant challenged "all rulings that the Defence had sufficient prior notice of the evidence of all or any of the Prosecution witnesses against whom an objection/application was raised/made";

CONSIDERING that the allegation made in paragraph 197 of the First Notice of Appeal is now included in paragraph 32 of the Re-filed Notice of Appeal and that, as far as witnesses GGR and DAF are concerned, the allegations made in paragraph 52 of the Re-filed Notice of Appeal were not included in the First Notice of Appeal;

FINDING therefore that references to witnesses GGR and DAF in paragraph 52 of the Re-filed Notice of appeal should be struck off;

FOR THE FOREGOING REASONS

DISMISS the Prosecution's Motion in part;

ORDER that paragraph 44 of the Re-filed Notice of Appeal, as well as the references to witnesses DAF and GGR in paragraph 52 of the Re-filed Notice of Appeal, be struck off the record;

RECOGNISE as validly filed the remaining parts of the Re-filed Notice of Appeal;

RECALL that the Decision of 17 November 2003 ordered the Appellant to file his Appellant's brief no later than 5 days after the rendering of the present decision, and that therefore the Appellant's brief should be filed no later than 2 December 2003.

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

Mohamed Shahabuddeen
Pre-Appeal Judge

Done this twenty-seventeenth day of November 2003,
At The Hague,
The Netherlands.

[Seal of the International Tribunal]