



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-96-14-A  
29 JANUARY 2004  
(441/H-438/H)

441/H

**IN THE APPEALS CHAMBER**

**Before:** Judge Mohamed SHAHABUDEEN, Pre-Appeal Judge  
**Registrar:** Mr. Adama DIENG  
**Decision of:** 29 January 2004

**Eliézer NIYITEGEKA**  
(Appellant)

v.

**THE PROSECUTOR**  
(Respondent)

Case No. ICTR-96-14-A

2004 JAN 29 P 2:10  
[Signature]

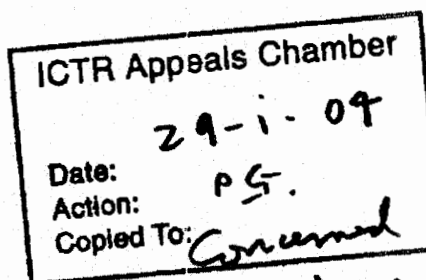
**DECISION ON DEFENCE MOTION FOR VARIATION OF THE NOTICE  
OF APPEAL**

**Counsel for the Appellant**

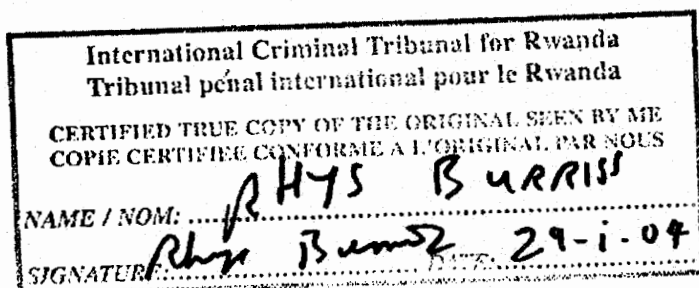
Ms. Sylvia Geraghty

**Counsel for the Prosecutor**

Mr. Hassan Bubacar Jallow  
Mr. Mélanie Werrett  
Mr. Alex Obote-Odora



Parties  
ALO, ILO,  
LSS



R. H. Y. S. B. U. R. I. S. S.

**I, MOHAMED SHAHABUDEEN**, 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 ("Judgement");

**NOTING** the Notice of Appeal re-filed on 17 October 2003 by Eliézer Niyitegeka ("Notice of Appeal" and "Appellant" respectively);

**BEING SEISED** of the "Urgent Defence Motion pursuant to (i) paragraph (C) 1(a) of Practice Direction of 16 September 2002 (Length of Brief) and (ii) Rule 108 of the Rules of Procedure and Evidence ICTR, (to vary the Grounds of Appeal set out in the Notice of Appeal)" filed on 12 December 2003 ("Urgent Motion");

**NOTING** that the "Decision on Defence Motion on the Length of the Appellant's Brief" rendered on 16 December 2003, as affirmed by the Appeals Chamber on 19 December 2003,<sup>1</sup> ordered the Appellant to re-file his Appellant's brief of no more than 35,000 words by 23 December 2003 and stated that the second part of the Urgent Motion to vary his Notice of Appeal will be examined in due course, after having considered the response of the Prosecutor to the Urgent Motion and the reply from the Appellant, if he wishes to file one;

**NOTING** that the Appellant filed his "Appeal Brief: Re-Filed" on 23 December 2003 ("Appellant's brief");

**NOTING** that the Prosecutor did not file a response to the Urgent Motion;

**CONSIDERING** that in the second part of the Urgent Motion, the Appellant applies for a variation of the Notice of Appeal as certain "minor typographical errors or reprints of minor extracts from earlier draft documents have inadvertently found their way into either the Notice of Appeal and/of the Appellate brief";<sup>2</sup>

<sup>1</sup> "Decision on Defence Extremely Urgent Motion for Reconsideration of Decision dated 16 December 2003", *Eliézer Niyitegeka v. The Prosecutor*, IT-96-14-A, 19 December 2003.

<sup>2</sup> See paragraphs 13 and 14 of the Urgent Motion.  
Case No. ICTR-96-14-A.

**NOTING** that Rule 108 of the Rules of Procedure and Evidence ("Rules") provides that "the Appeals Chamber may, on good cause being shown by motion, authorize a variation of the grounds of appeal";

**CONSIDERING** that the deletions of certain words in grounds 19<sup>3</sup>, 20<sup>4</sup> and 48<sup>5</sup> of the Appellant's brief compared to the same grounds in the Notice of Appeal amount to typographical errors or minor matters and that the Appellant has shown good cause for the deletion of these words in the above-mentioned grounds of the Notice of Appeal;

**CONSIDERING** that, in the Appellant's brief, the Appellant added new allegations in grounds 40, 53 and 54, compared to the same grounds as they appear in the Notice of the Appeal, by challenging the credibility of witnesses that were not named in the Notice of Appeal;<sup>6</sup>

**CONSIDERING** that these changes cannot be regarded as "minor typographical errors or reprints of minor extracts from earlier draft documents" as alleged by the Appellant, and that the Appellant has not shown any other reason for the proposed amendments; in particular the Appellant has not explained how the inclusion in grounds 40, 53 and 54 of these witnesses, whose credibility is challenged in other grounds of the Notice of Appeal<sup>7</sup>, could be of substantial importance to the success of the appeal such as to lead to a miscarriage of justice if they were to be excluded;<sup>8</sup>

**CONSIDERING** therefore that the Appellant has not shown good cause for the proposed amendments of grounds 40, 53 and 54 of the Notice of Appeal within the meaning of Rule 108 of the Rules;

<sup>3</sup> See paragraph 14 of the Urgent Motion.

<sup>4</sup> As to ground 20, the Appellant is only alleging a small error in the numbering of the paragraphs of the first Appellant's brief filed on 2 December 2003. This error was subsequently corrected in the Appellant's brief re-filed on 23 December 2003.

<sup>5</sup> See paragraph 14 of the Urgent Motion.

<sup>6</sup> In ground 40 of the Appellant's brief, the Appellant includes Witness GGH; in ground 53, the Appellant includes Witnesses KJ and GGV and in ground 54, the Appellant includes Witness GGV.

<sup>7</sup> The credibility of witness GGH is challenged in paragraph 45 of the Notice of Appeal; the credibility of Witness GGV is challenged in paragraphs 48 and 43 of the Notice of Appeal; and the credibility of Witness KJ is challenged in paragraphs 48 and 42 of the Notice of Appeal.

<sup>8</sup> See "Decision granting leave to Dario Kordić to amend his notice of appeal", *Prosecutor v. Kordić & Cerkez*, IT-95-14/2-A, 9 May 2002, paragraph 5.  
Case No. ICTR-96-14-A.

**FOR THE FOREGOING REASONS,**

**ORDER** that references to Witness GGH in ground 40 of the Appellant's brief, to Witnesses GGV and KJ in ground 53 of the Appellant's brief and to Witness GGV in ground 54 of the Appellant's brief, be struck off the Appellant's brief;

**AUTHORISE** the variation sought of the grounds of appeal 19, 20 and 48 and **DISMISS** in other respects the Urgent Motion to vary the Notice of Appeal.

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

*Mohamed Shahabuddeen*

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Mohamed Shahabuddeen  
Pre-Appeal Judge

Done this twenty-nine day of January 2004,  
At The Hague,  
The Netherlands.

[Seal of the International Tribunal]

