

ICTR-96-14-A
25 FEBRUARY 2004
(5461H. 5421H)

5461H



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: Judge Mohamed SHAHABUDEEN, Pre-Appeal Judge
Registrar: Mr. Adama DIENG
Decision of: 25 February 2004

JUDICIAL OFFICE
2004 FEB 27 P 1:15
[Signature]

Eliézer NIYITEGEKA
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-96-14-A

**DECISION ON THE APPELLANT'S URGENT MOTION CONCERNING
DEFECTS IN THE RESPONDENT'S BRIEF**

Counsel for the Appellant

Ms. Sylvia Geraghty

Counsel for the Prosecutor

Ms. Mélanie Weirrett
Mr. James Stewart

ICTR Appeals Chamber
Date: 25-11-04
Action: PG
Copied To: Judges

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DATE: 25-11-04

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 ("Appellant");

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

NOTING that the Prosecutor filed the "Prosecution Response Brief" on 30 January 2004 ("Respondent's brief");

BEING SEISED OF the "Appellants Extremely Urgent Motion Concerning Defects in Prosecutors Response" ("Urgent Motion") filed on 6 February 2004, in which the Appellant submits *inter alia* that the Appeals Chamber should reject the Respondent's brief as, in its Respondent's brief, the Prosecution "flagrantly defy the Appeals Chamber and intentionally violate the Practice Direction on Respondent's Brief, unilaterally deciding not to comply with mandatory Rule 5, which stipulates 'the statements and arguments must be set out and numbered in the same order as in the Appellants Brief'¹; alternatively, the Appeals Chamber should order the Prosecution to re-file its Respondent's brief in compliance with Rule 5 of the Practice Direction on Formal Requirements for Appeals from Judgement ("Practice Direction");

NOTING the "Prosecution Response to Appellants Extremely Urgent Motion Concerning Defects in Prosecutors Response" filed on 11 February 2004, in which the Prosecution submits that the Urgent Motion should be dismissed because the structure of the Respondent's brief complies with the requirement set out in the Practice Direction, because the manner in which the Appellant presented his arguments in the Appellant's brief made it impossible to precisely follow his presentation, and because, as a result, the Prosecution attempted to make sense of the structure of the argument while maintaining reference to the arguments as set out and numbered in the Appellant's brief;

NOTING that paragraph 5 of the Practice Direction provides *inter alia* that “the statement and the arguments must be set out and numbered in the same order as in the Appellant’s brief and shall be limited to arguments made in response to that brief”;

NOTING that the Appellant’s brief presents 62 grounds of appeal;

CONSIDERING that, by responding to the Appellant’s grounds of appeal in a sequence different from that adopted in the Appellant’s brief, the Prosecution attempted to present its response to the Appellant’s grounds of appeal from the point of view of its case but without disturbing the numbering scheme used in the Appellant’s brief;

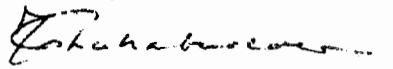
CONSIDERING that this approach, consisting in avoiding unnecessary repetitions and presenting the Prosecution’s case in a structured way, does not violate the object and purpose of paragraph 5 of the Practice Direction;

FOR THE FOREGOING REASONS,

DISMISS the Urgent Motion and **FIND** that it is frivolous within the meaning of Rule 73(F) of the Rules of Procedure and Evidence;

DIRECT the Registrar, pursuant to Rule 73(F) of the Rules of Procedure and Evidence, not to pay the Defence Counsel any fees or costs associated with the Urgent Motion.

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



Mohamed Shahabuddeen

Pre-Appeal Judge

Done this twenty-fifth day of February 2004,
At The Hague,
The Netherlands.

[Seal of the International Tribunal]

