

ICTR-98-44A-A  
27 FEBRUARY 2004  
(143/H-141/H)

14:



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

**IN THE APPEALS CHAMBER**

Before: Judge Florence Ndepele Mwachande Mumba  
Registrar: Mr. Adama Dieng  
Order of: 27 February 2004

2004 MAR - 1 A 9 30  
*[Handwritten signature]*

**JUVÉNAL KAJELIJELI**  
*(Appellant)*

v.

**THE PROSECUTOR**  
*(Respondent)*

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE CONFORMÉ À L'ORIGINAL PAR MOI  
NAME / NOM: RHTS Bureau  
SIGNATURE: Mrs B... 27-ii-04

Case No. ICTR-98-44A-A

**ORDER FOR THE DEFENCE TO FILE ADDITIONAL EVIDENCE IN  
SUPPORT OF DEFENCE MOTION FOR THE ADMISSION OF  
ADDITIONAL EVIDENCE PURSUANT TO RULE 115 OF THE RULES OF  
PROCEDURE AND EVIDENCE**

ICTR Appeals Chamber  
Date: 27-ii-04  
Action: PG  
Copied To: Judges  
AWs / LOs  
Pantles  
LSS  
Archives  
Mrs B...

Counsel for the Prosecution  
Melanie Werrett  
James Stewart

Counsel for the Appellant  
Lennox Hinds

**I, FLORENCE NDEPELE MWACHANDE MUMBA**, 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 ("Tribunal");

**NOTING** the "Order of the Presiding Judge Assigning Judges and Designating the Pre-Appeal Judge", filed on 10 December 2003, which designated me to serve as Pre-Appeal Judge in this case;

**BEING SEISED OF** the "Defense Motion for the Admission of Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence" ("Defence Motion"), filed by the Defence on 16 February 2004;

**NOTING** the "Prosecution Response to Defense Motion for Admission of Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence", filed by the Prosecution on 26 February 2004;

**NOTING** that by virtue of Rule 108bis (B) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), "the Pre-Appeal Judge shall ensure that the proceedings are not unduly delayed and shall take any measures related to procedural matters, including the issuing of decisions, orders and directions with a view to preparing the case for a fair and expeditious hearing";

**NOTING** that Rule 115 (A) of the Rules provides that:

A party may apply by motion to present additional evidence before the Appeals Chamber. Such motion shall clearly identify with precision the specific finding of fact made by the Trial Chamber to which the additional evidence is directed, and must be served on the other party and filed with the Registrar no later than seventy-five days from the date of the judgement, unless good cause is shown for further delay. Rebuttal material may be presented by any party affected by the motion;

**NOTING** that to be admissible under Rule 115, evidence that was not available at trial and could not have been discovered through the exercise of due diligence, must be credible and relevant to a material issue and "such that it *could* have had an impact on the verdict *i.e.*, could have shown, in the case of a request by a defendant, that a conviction was unsafe";<sup>1</sup>

**CONSIDERING** that a motion pursuant to Rule 115 should contain sufficiently detailed submissions concerning the effect of that evidence upon the verdict, including precise reference to which finding the party seeks to impugn with each piece of evidence;

**FINDING** that the Defence Motion was filed without inclusion of the additional evidence and other related materials referred to in the Defence Motion, and, in addition, has failed to give detailed submissions of the effect of that evidence upon the verdict, Trial Chamber findings, and all material issues in the case, and, therefore, constitutes an incomplete and deficient filing;

**FOR THE FOREGOING REASONS,**

**GRANTS** the Defence leave to file an addendum to the Defence Motion, that includes the additional evidence, and other related materials, if any, that it seeks to tender under Rule 115, and which it refers to in the Defence Motion, and to provide detailed submissions about the effect of the additional evidence upon the verdict, including a precise account of which findings the party seeks to impugn with each piece of evidence, no later than 8 March 2004; and

**GRANTS** leave for the Prosecution to amend the Prosecution Response following the filing of the additional evidence by the Defence, should it seek to do so, by 12 March 2004.

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



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Florence Ndepele Mwachande Mumba  
Pre-Appeal Judge

Done this 27<sup>th</sup> day of February 2004,  
At the Hague,  
The Netherlands.



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<sup>1</sup> *Krstić*, Decision on Applications for Admission of Additional Evidence on Appeal, 5 August 2003. See also *Kvočka* Decision on Appellants' Motions to Admit Additional Evidence Pursuant to Rule 115, 16 February 2004.  
Case No. ICTR-98-44A-A.