

ICTR-01-76-AR72

24 MARCH 2004

(16/H-14/H)

1611



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:

Judge Theodor Meron, Presiding Judge
Judge Florence Mumba
Judge Mehmet Güney
Judge Wolfgang Schomburg
Judge Inés Mónica Weinberg de Roca

Registrar:

Mr. Adama Dieng

Decision of:

24 March 2004

Aloys SIMBA

v.

THE PROSECUTOR

Case No. ICTR-01-76-AR72

ICTR Appeals Chamber

Date: 24-III-04
Action: P.G.
Copied To: Judges

AWs / Ls

LSS

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**DECISION ON ALOYS SIMBA'S INTERLOCUTORY APPEAL
REGARDING DEFECTS IN THE FORM OF THE INDICTMENT**

Counsel for the Prosecution

Mr William Egbe
Mr Sulaiman Khan
Ms Amina Ibrahim

Counsel for the Defence

Mr Sadikou Ayo Alao
Ms Beth Lyons

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 1994 and 31 December 1994 ("International Tribunal"),

BEING SEISED OF the "Acte d'appel contre la décision du 26 janvier 2004 déclarant sans objet la requête de la défense en exceptions préjudicielles et en incompétence du 31 octobre 2002", filed on 26 February 2004 by counsel for Aloys Simba ("Appeal" and "Appellant," respectively);

NOTING Trial Chamber I's "Decision on Defence Motion alleging Defects in the Form of the Indictment" dated 26 January 2004 ("Decision"), which dismissed as moot the Appellant's "Defence Preliminary Motion for Defects in the Form with Respect to Four Counts and for Lack of Jurisdiction," dated 31 October 2002 ("Motion");

CONSIDERING that the Prosecution has not filed a response within the ten-day period allowed under paragraph 2 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal dated 16 September 2002;

CONSIDERING that the Decision dismissed the Motion as moot because (1) the Trial Chamber granted the Prosecution leave to amend the indictment,¹ which amendments substantially altered the basis of the Motion and rendered it moot in respect of three of the four counts; and (2) with respect to the remaining count, the Trial Chamber held that it lacked jurisdiction to decide a motion in respect of an indictment that had been superseded;

CONSIDERING that, under Rule 72(B)(ii) of the Rules of Procedure and Evidence of the International Tribunal ("Rules"), preliminary motions other than motions challenging jurisdiction, including motions that assert defects in the form of the indictment, are without interlocutory appeal unless certification to appeal has been granted by the Trial Chamber;

CONSIDERING that the Appellant has not shown that he has obtained certification to appeal the Decision under Rule 72(B)(ii) of the Rules;

CONSIDERING that, although the Motion is styled in part as a motion asserting a lack of jurisdiction, the Appellant's submissions regarding jurisdiction are inseparable from his challenges to the form of the indictment and do not raise any independent argument challenging the

¹ Decision on Motion to Amend Indictment, 26 January 2004.
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jurisdiction of the International Tribunal, as would be required for an appeal as of right under Rule 72(B)(i) and (D) of the Rules;

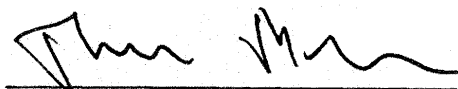
NOTING that the Decision permits the Appellant to preserve his objections, should he wish to do so, by filing a new preliminary motion directed to the amended indictment;

CONSIDERING that the Appeal purports to challenge the Trial Chamber's decision granting leave to amend the indictment, even though such decision is not subject to interlocutory appeal under Rule 72 of the Rules and has not been certified for appeal under Rule 73(B) of the Rules;

FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Appeal in its entirety for lack of appellate jurisdiction.

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



Theodor Meron
Presiding Judge

Done this 24th day of March 2004,
At The Hague,
The Netherlands.

[Seal of the International Tribunal]

