

ICTR-98-44-AR73.2
8 APRIL 2004
(1211H - 1181H)

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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

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IN THE APPEALS CHAMBER

Before:

Judge Theodor Meron, Presiding
Judge Mohamed Shahabuddeen
Judge Florence Mumba
Judge Mehmet Güney
Judge Inés Mónica Weinberg de Roca

Registrar:

Mr. Adama Dieng

Decision of:

8 April 2004

**Mathieu NGIRUMPATSE
Joseph NZIRORERA**

v.

THE PROSECUTOR

Case No ICTR-98-44-AR73.2

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: RHYSS
SIGNATURE: Rhys [Signature]
8-iv-04

**DECISION ON INTERLOCUTORY APPEAL REGARDING MOTION FOR
DECLARATION OF MISTRIAL AND ON MOTION TO SUSPEND TRIAL**

Counsel for the Prosecution

Mr. Don Webster
Ms. Dior Fall
Ms. Ifeoma Ojemeni
Ms. Holo Makwaia

Counsel for the Defence

Mr. Charles Roach
Mr. Frédéric Weyl
Mr. Peter Robinson

ICTR Appeals Chamber
8-iv-04
Action: PG
Copied To: JUD 50

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Pantres
Archive
Rhys [Signature]

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 (“Appeals Chamber” and “International Tribunal”, respectively),

BEING SEISED OF the “Notice of Appeal from Decision of Trial Chamber III of February 19, 2004 Dismissing the Motion for Declaration of Mistrial,” filed by counsel for Mathieu Ngirumpatse on 15 March 2004 (“Appeal” and “Appellant,” respectively) and of the “Motion to Order that Trial Chamber III Does Not Resume the Trial Until the Appeals Chamber Decides the Pending Motion for Mistrial,” filed by counsel for the Appellant on 23 March 2004 (“Motion to Suspend Trial”);

NOTING “Joseph Nzirorera’s Joinder in Interlocutory Appeal from Decision on Defence Motion for the Declaration of Mistrial,” filed by counsel for Joseph Nzirorera on 15 March 2004;

NOTING the “Prosecutor’s Response to Ngirumpatse’s Notice of Appeal from Decision of Trial Chamber III of February 19, 2004 Dismissing the Motion for Declaration of Mistrial and to Nzirorera’s Joinder,” filed by the Prosecution on 24 March 2004;

NOTING the “Prosecutor’s Response to Ngirumpatse’s Motion to Order that Trial Chamber III Does Not Resume the Trial Until the Appeals Chamber Decides the Pending Motion for Mistrial,” filed by the Prosecution on 24 March 2004;

NOTING “Appellant Ngirumpatse’s Reply to Prosecutor’s Response to Notice of Appeal from Decision of Trial Chamber III of February 19, 2004 Dismissing the Motion for Declaration of Mistrial,” filed by counsel for Mathieu Ngirumpatse on 29 March 2004 (“Reply”);

CONSIDERING that, although the Appeal is styled “Notice of Appeal,” the Appellant confirms in the Reply that it constitutes the entirety of his opening submissions on the Appeal and requests that the Appeals Chamber treat it as his brief on the Appeal;

CONSIDERING that the Appeal sets forth the Appellant’s position in sufficient detail and may therefore be treated as an appeal brief;

CONSIDERING that the Appellant contends that the Appeals Chamber’s Decision of 19 December 2003 (“19 December Decision”)¹ “declared void” the indictment in this case or rendered

¹ *Prosecutor v. Karemera et al.*, No. ICTR-98-44-AR73, Decision on Prosecutor’s Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment, 19 December 2003.
Case No. ICTR-98-44-AR73.2

it a “nullity,” such that the trial proceedings that had occurred prior to that date should be declared invalid and the trial begun anew;

CONSIDERING that the 19 December Decision decided an interlocutory appeal from the Trial Chamber’s decision of 8 October 2003 (“8 October Decision”),² and that the 8 October Decision allowed in part and dismissed in part the Prosecutor’s motion for separate trials and for an amendment to the indictment filed 21 November 2001;

CONSIDERING that the 19 December Decision held that the Trial Chamber erred in its dismissal of the Prosecution’s motion to amend the indictment, vacated the 8 October Decision, and remitted the matter to the Trial Chamber for further consideration;

CONSIDERING that the 19 December Decision did not address the portion of the 8 October Decision that granted part of the Prosecutor’s motion to amend the indictment filed 21 November 2001;³

CONSIDERING that the amended indictment filed on 13 October 2003 was filed pursuant to that portion of the 8 October Decision that was not addressed by the Appeals Chamber’s 19 December Decision vacating the 8 October Decision;

CONSIDERING that the Appeals Chamber’s vacatur of the 8 October Decision did not annul the indictment filed by the Prosecutor on 13 October 2003, but rather simply permitted the Trial Chamber to reconsider whether the proposed amendments dismissed in the 8 October Decision should be allowed;

CONSIDERING that the 19 December Decision did not contain any pronouncement regarding the validity of the then-operative indictment, but rather decided only that the Trial Chamber applied an incorrect analysis in dismissing the Prosecution’s proposed amendments;

CONSIDERING that the Trial Chamber correctly construed the 19 December Decision in its order of 13 January 2004, which stated that the Appeals Chamber vacated the 8 October Decision in part and invited the Trial Chamber to reconsider the motion filed by the Prosecution, such that the Trial Chamber was again seised of the Prosecution motion to amend the indictment;⁴

² *Prosecutor v. Bizimana et al.*, No. ICTR-98-44-I, Decision on the Prosecutor’s Motion for Separate Trials and for Leave to File an Amended Indictment, 8 October 2003.

³ *Ibid.*, para. 31.

⁴ *Prosecutor v. Karemera et al.*, No. ICTR-98-44-I, Ordonnance faisant suite à la décision de la chambre d’appel en date du 19 décembre 2003, 13 January 2004, p. 2.

CONSIDERING that the Trial Chamber's order of 13 January 2004 confirmed that, pending a further decision on the motion to amend the indictment, proceedings would continue to be governed by the indictment filed on 21 November 2001, as amended by the 8 October Decision, which in effect was the indictment filed on 13 October 2003;⁵

CONSIDERING that the Appellant does not contend that he suffered any prejudice due to the conduct of the trial on the basis of the indictment filed on 13 October 2003;

FINDING that the 19 December Decision did not declare the operative indictment at trial to be a nullity and did not deprive the Trial Chamber of jurisdiction to conduct the proceedings on the basis of that indictment;

CONSIDERING that the Appellant's remaining arguments need not be addressed in light of the conclusion that the 19 December Decision did not affect the validity of the operative indictment;

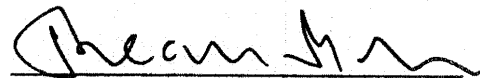
CONSIDERING that the Appellant's request that the trial be suspended pending this decision is hereby rendered moot;

FOR THE FOREGOING REASONS,

DISMISSES the Appeal in its entirety; and

DISMISSES the Motion to Suspend Trial as moot.

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

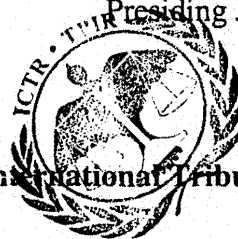


Theodor Meron

Presiding Judge

Done this 8th day of April 2004,
At The Hague,
The Netherlands.

[Seal of the International Tribunal]



⁵ *Ibid.*