



Tribunal Penal International pour le Rwanda
International Criminal Tribunal for Rwanda

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BEFORE A BENCH OF THE APPEALS CHAMBER

Before:

Judge Theodor Meron, Presiding Judge
Judge Florence Mumba
Judge Mehmet Güney

Registrar:

Mr. Adama Dieng

Decision of:

4 June 2004

ICTR-01-76-AR72.2
7th June, 2004
(741A - 701A)

Aloys SIMBA

v.

THE PROSECUTOR

Case No. ICTR-01-76-AR72.2

2004 JUN 7 10 5 11
M. Werrett

**DECISION ON VALIDITY OF APPEAL PURSUANT TO
RULE 72(E) OF THE RULES OF PROCEDURE AND EVIDENCE**

Counsel for the Prosecution

Mr. Hassan Bubacar Jallow
Ms. Melanie Werrett
Mr. James Stewart
Mr. William Egbe
Mr. Sulaiman Khan
Ms. Amina Ibrahim

Counsel for the Defence

Mr. Sadikou Ayo Alao
Ms. Beth Lyons

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THIS BENCH 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"),

BEING SEISED OF the "Notice of Appeal of 'Decision on Preliminary Defence Motion Regarding Defects in the Form of the Indictment' Issued in English by Trial Chamber I, 6 May 2004, Pursuant to Article 108 (RPE)", filed on 14 May 2004 by counsel for Aloys Simba ("Appeal" and "Appellant" respectively);

NOTING Trial Chamber I's "Decision on Preliminary Defence Motion Regarding Defects in the Form of the Indictment" dated 6 May 2004 ("Impugned Decision"), which dismissed in part the Appellant's "Requête de la défense en exceptions préjudicielles et en incompétence pour vices de forme substantiels contre l'acte d'accusation modifié en date du 28 novembre 2003", filed on 16 April 2004 and the Corrigendum thereto filed on 20 April 2004;

CONSIDERING that the Prosecution has not filed a response to the Appeal or moved for an extension of time in which to file one;

CONSIDERING that the Appellant submits the following grounds of appeal:

- 1) The issuance of the Impugned Decision only in English violates the rights of the accused under Articles 20(4)(a) and (d) of the Statute of the International Tribunal ("Statute") insofar as the accused and his Lead Counsel cannot understand English ("First Ground");
- 2) The Trial Chamber, by failing to mandate the Prosecutor to correct the defects of vagueness and imprecision of the amended indictment, violated the right of the accused to be informed of the nature and cause of the charges against him pursuant to Article 20(4)(a) of the Statute ("Second Ground");
- 3) The Trial Chamber violated the right of the accused to be charged only for conduct within the International Tribunal's temporal jurisdiction by permitting the use of events outside its temporal jurisdiction to prove criminal allegations within its temporal jurisdiction ("Third Ground");

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- 4) (i) The Prosecutor failed to comply with the Impugned Decision in relation to the pleading of the *mens rea* element of joint criminal enterprise ("First Sub-Ground of the Fourth Ground");
- (ii) The Trial Chamber erred in rejecting the Appellant's arguments that the theory of joint criminal enterprise violated his right to due process and a fair trial by potentially holding him responsible for the acts of others; that the theory of joint criminal enterprise was factually unsupported; and that the theory of joint criminal enterprise charged him with criminal responsibility for acts "for which he is given no notice" and which are not pleaded in the Indictment ("Second Sub-Ground of the Fourth Ground");
- 5) The Prosecutor failed to comply with the Impugned Decision in relation to the charge of murder as a crime against humanity ("Fifth Ground");

CONSIDERING that the Appeal purports to proceed under Rule 108 of the Rules of Procedure and Evidence of the International Tribunal ("Rules"), which applies only to appeals from final judgement or sentence and, therefore, that Rule 108 of the Rules cannot provide a basis for appeal of the Impugned Decision;

CONSIDERING that the Appeal challenges a decision on a preliminary motion and that, pursuant to Rule 72(B) of the Rules, decisions on preliminary motions are without interlocutory appeal save in the case of motions challenging jurisdiction and, in other cases, where certification has been granted by the Trial Chamber;

CONSIDERING that the Appellant and his counsel were reminded of the requirements of Rule 72(B) of the Rules in an earlier decision in this case;¹

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

CONSIDERING that Rule 72(D) of the Rules provides that a motion challenging jurisdiction refers exclusively to a motion which challenges an indictment on the ground that it does not relate to the personal, territorial or temporal jurisdiction of the International Tribunal, or to any of the violations enumerated in Articles 2, 3, 4 and 6 of the Statute;

CONSIDERING that Rule 72(E) of the Rules provides that an appeal brought under Rule 72(B)(i) may not be proceeded with if a bench of three judges of the Appeals Chamber decides that the

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appeal is not capable of satisfying the requirements of Rule 72(D), in which case the appeal shall be dismissed;

CONSIDERING that the First and Second Grounds of appeal do not challenge the jurisdiction of the International Tribunal within the meaning of Rule 72(D) of the Rules and, consequently, are not subject to interlocutory appeal under Rule 72(B)(i) of the Rules;

CONSIDERING that the First Sub-Ground of the Fourth Ground and the Fifth Ground do not purport to challenge the Impugned Decision, but rather the Amended Indictment dated 10 May 2004 filed in response to the Impugned Decision, and that these objections should be first addressed to the Trial Chamber;

CONSIDERING that the Second Sub-Ground of the Fourth Ground contends that the theory of joint criminal enterprise, as pleaded in the indictment, violates the Appellant's right to due process and a fair trial, and also that the indictment is unsupported by factual allegations and does not provide adequate notice of the acts of others for which he is allegedly responsible;

CONSIDERING that these arguments do not challenge the indictment on the ground that it does not relate to either the violations over which the Tribunal has jurisdiction, as required by Rule 72(D)(iv) of the Rules, or the personal, territorial or temporal jurisdiction of the Tribunal, as required by Rule 72(D)(i) through (iii) of the Rules;

CONSIDERING, however, that the Third Ground asserts that the amended indictment charges conduct outside the temporal jurisdiction of the International Tribunal and is therefore subject to interlocutory appeal as of right under Rule 72(B)(i) and (D)(iii) of the Rules;

FOR THE FOREGOING REASONS,

1. **HEREBY DISMISSES** the Appeal insofar as it concerns the First, Second, Fourth and Fifth Grounds;
2. **DECLARES** that the Appeal is validly filed and may proceed with regard to the Third Ground;
3. **INFORMS** the parties that they may file written briefs as follows :

¹ *Simba v. Prosecutor*, No. ICTR-01-76-AR72, Decision on Aloys Simba's Interlocutory Appeal Regarding Defects in the Form of the Indictment, 24 March 2004, p. 2.
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- i) The Appellant may file a supplementary brief within 10 days of this decision;
- ii) The Prosecution may file a response within seven days of the filing of the supplementary brief or, if no such brief is filed, may file a brief addressing the merits of the Third Ground within 14 days of this decision;
- iii) The Appellant may reply to any response or brief filed by the Prosecution within four days of the filing of such response or brief.

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



Theodor Meron
Presiding Judge

Done this 4th day of June 2004,
At The Hague,
The Netherlands.

