

ICTR-98-44-AR72.2

11 June 2004
(581/H - 578/H)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

BEFORE A BENCH OF THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Inés Mónica Weinberg de Roca

Registrar: Mr. Adama Dieng

Decision of: 11 June 2004

Edouard KAREMERA
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-98-44-AR72.2

ICTR Appeals Chamber

Date: 11 June 2004
Action: PG
Copied To: Concerned Judge
Parties, Judicial Archi
LOs, CSS
[Signature]

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

Counsel for the Appellant

Ms. Dior Diagne Mbaye
Mr. Papa Moussa Félix Sow

Counsel for the Prosecution

Mr. Hassan Bubacar Jallow
Ms. Melanie Werrett
Mr. James Stewart
Mr. Don Webster

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS

NAME / NOM: ROSETTE MUZIGO-MORRISON
SIGNATURE: *[Signature]* DATE: 11 June 04

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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 1994 and 31 December 1994 (“Tribunal”);¹

BEING SEIZED OF the “Appeal by Edouard Karemera’s Defence Against the 2 April 2004 Decision of Trial Chamber III on the Defence Motion, Pursuant to Rules 72 and 73 of the Rules of Procedure and Evidence, Pertaining to Lack of Subject-Matter Jurisdiction, Lack of Personal Jurisdiction and Defects in the Form of the Indictment” filed by Edouard Karemera (“Appellant”) on 15 April 2004 (“Appeal”);

NOTING the “Decision on the Preliminary Motion of the Accused Challenging the *Ratione Materiae, Ratione Personae* Jurisdiction and Defects in the Form of the Indictment” rendered by Trial Chamber III of the Tribunal on 2 April 2004 (“Impugned Decision”) which dismissed in its entirety the Appellant’s “Preliminary Motion Challenging the *Ratione Materiae* Jurisdiction” filed on 24 March 2004 (“Motion”);

NOTING the “Prosecutor’s Response to the Appeal of the Defence for Edouard Karemera Against Trial Chamber III Decision of 2 April 2004 *relative à l’exception préjudicielle de l’accusé pour incompétence ratione materiae, ratione personae et pour vices de forme*” filed on 28 April 2004;

CONSIDERING that the Appellant challenges a decision on a preliminary motion purportedly brought under Rules 72 and 73 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), and that pursuant to Rules 72(B) and 73(B) of the Rules decisions on such motions are without interlocutory appeal save in the case of preliminary motions challenging jurisdiction, as set out in Rule 72(B)(i) of the Rules, and, in other cases, where certification has been granted by the Trial Chamber;

CONSIDERING that the Appellant has not shown that he has obtained certification to appeal the Impugned Decision under Rules 72(B)(ii) or 73(B) of the Rules;

CONSIDERING Rule 72(D) of the Rules, which provides that a motion challenging jurisdiction referred to in Rule 72(B)(i) of the Rules refers exclusively to a motion which challenges an indictment on the ground that it does not relate to:

¹ See Order of the Presiding Judge Assigning a Bench of Three Judges Pursuant to Rule 72(E) of the Rules of Procedure and Evidence, 19 May 2004.

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- (i) any of the persons indicated in Articles 1, 5, 6 and 8 of the Statute of the Tribunal ("Statute");
- (ii) the territories indicated in Articles 1, 7 and 8 of the Statute;
- (iii) the period indicated in Articles 1, 7 and 8 of the Statute; or
- (iv) any of the violations indicated in Articles 2, 3, 4 and 6 of the Statute;

CONSIDERING Rule 72(E) of the Rules, which provides that an appeal brought under Rule 72(B)(i) of the Rules may not be proceeded with if a bench of three Judges of the Appeals Chamber, assigned by the Presiding Judge, decides that the appeal is not capable of satisfying the requirements of Rule 72(D) of the Rules, in which case the appeal shall be dismissed;

NOTING that the Appellant presents the following grounds of appeal:

- 1) The Trial Chamber failed to provide a reasoned opinion in respect of arguments concerning lack of subject matter and personal jurisdiction raised in the Motion ("First Ground");² and
- 2) The Trial Chamber erred in its finding concerning defects in the form of the indictment ("Second Ground");³

CONSIDERING that, with regard to the First Ground, the Motion did not challenge the indictment on any of the grounds set out in Rule 72(D) of the Rules, but rather it (i) sought a declaration that the Trial Chamber "lacks jurisdiction to consider the involvement of any political or military structure in the alleged crime of conspiracy with which [the Appellant] is charged",⁴ and (ii) sought dismissal of the charges based on allegations of the Appellant's superior responsibility because, in the Appellant's view, the indictment does not identify the alleged subordinates and does not specify the offences allegedly committed by them;⁵

CONSIDERING that the Appellant contends in the Appeal that the Chamber "lacks jurisdiction to try leaders in relation to criminal responsibility for crimes committed by legal entities";⁶

CONSIDERING, however, that such an argument does not constitute a challenge to personal jurisdiction within the meaning of Rule 72(D)(i) of the Rules, since it is clear that the indictment relates to the Appellant as a person within the meaning of Articles 1, 5, 6 and 8 of the Statute;

² See Appeal, pp. 7-8.

³ See Appeal, pp. 8-9.

⁴ Appeal, p. 8; Motion, p. 11.

⁵ Appeal, pp. 5, 6; Motion, p. 13.

⁶ Appeal, p. 8. See also Motion, p. 10.

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CONSIDERING further that the argument does not challenge subject matter jurisdiction within the meaning of Rule 72(D)(iv) of the Rules, since the crimes charged in the indictment consist of violations enumerated in Articles 2, 3, 4 and 6 of the Statute;

CONSIDERING that the Appellant also appears to raise an argument as to temporal jurisdiction⁷ but that the Appellant did not raise such an argument in the Motion and that the Trial Chamber did not address such an argument in the Impugned Decision;

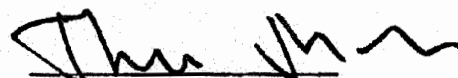
CONSIDERING that the Appellant cannot raise this argument for the first time on appeal;

CONSIDERING that, with regard to the Second Ground, under Rule 72 of the Rules an appeal lies as of right only in the case of motions challenging jurisdiction, not in the case of motions alleging defects in the form of the indictment;

FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Appeal in its entirety.

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



Theodor Meron
Presiding Judge

Dated this 11th day of June 2004,
at The Hague,
The Netherlands.

[Seal of the International Tribunal]



⁷ Appeal, p. 8.